

Combating Elder Abuse: Next Steps for California

A Report from the Assembly Select Committee on Elder Abuse
2003-2004 Legislative Session



Members of the Select Committee

Chair, The Honorable Joe Simitian
The Honorable Patty Berg
The Honorable Lynn Daucher
The Honorable Dario Frommer
The Honorable John Laird
The Honorable Carol Liu
The Honorable Ken Maddox

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PATTY BERG
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Assembly
California Legislature

SELECT COMMITTEE ON ELDER ABUSE

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Combating Elder Abuse: Next Steps for California

The California State Assembly formed the Select Committee¹ on Elder Abuse in 2003 with a broad mandate to investigate and conduct hearings on the prevalence of elder abuse in the community, its causes, and preventative measures. Assemblyman Joe Simitian (D-Palo Alto) was appointed Chair of the Committee at its inception.

Elder abuse is a growing national and statewide problem. California, in particular, appears to be vulnerable. It is home to the largest elderly population in the country. The California Attorney General's office recently estimated that more than 225,000 cases of elder abuse occur every year in California. Because of gaps in reporting, investigation, and prosecution, the extent of elder abuse is not completely known. With California's aging population and its diminishing resources, the problem of elder abuse is expected to grow.

¹ A Select Committee is a temporary committee of the legislature that is formed in response to a specific need or developing issue. The formation of these committees is subject to the approval of legislative leadership and must be renewed every session. A select committee generally holds meetings outside of the regular legislative calendar, as determined by the Chair.

The Select Committee on Elder Abuse convened its first two public hearings in Northern California, addressing two forms of abuse—financial and physical—from the perspective of counties, which are by and large responsible for the prevention, investigation and prosecution of elder abuse, both at the home and in institutional settings. These hearings were informational in nature, with an emphasis on proposing legislative solutions to the problem of physical or financial abuse. The public was invited to comment as well.

The first hearing in San Jose brought together stakeholders from County Aging and Adult Services and Adult Protective Services, local law enforcement and district attorneys' offices, as well as a medical expert, a nursing home reform advocate, and a nonprofit legal services representative.

The second hearing in Santa Cruz brought together similar local stakeholders as well as representatives from the California Attorney General's Office and the local ombudsman's office.

Panelists shared heartbreaking tales of elder abuse in their testimony, but they also made specific suggestions with respect to the reporting and documentation of elder abuse, education and prevention, and strengthening legal tools for prosecution. One point that came up repeatedly was the importance of teamwork between stakeholders, and the sharing of information and practices. Because elder abuse issues are healthcare issues, long-term care issues, social services issues, and justice system issues, teamwork and a shared commitment across these systems are necessary to protect seniors mentally, physically, emotionally, and financially.

The publication of this Report is intended to be a first step in recording a public dialogue and capturing our state's progress in identifying problems and proposing solutions. The problem of elder abuse will not be resolved overnight. It must be tackled over many years with a long-term outlook in mind. The observations and suggestions contained in this Report will be the basis for legislative proposals to follow.

Readers are invited to share their feedback regarding the contents of this Report by e-mail:

Assemblymember.Simitian@assembly.ca.gov.

AGENDA
**COMBATING ELDER ABUSE:
NEXT STEPS FOR CALIFORNIA**
December 5, 2003 from 1:00 – 4:00 p.m.
Santa Clara County Board of Supervisors' Chambers
70 West Hedding Street, San Jose

1:00 – 1:10 pm **Welcome & Introductory Remarks**

1:10 – 2:15 pm **Financial Abuse Panel: Problems & Solutions**

- Jamie Buckmaster, Manager, Adult Protective Services, Santa Clara County
- Cindy Seeley Hendrickson, Deputy District Attorney, Santa Clara County Office of the District Attorney
- Helen Karr, Esq., Commissioner, California Commission on Aging
- Lori Kratzer, Detective, Palo Alto Police Department
- Lisa Mancini, Director, San Mateo County Aging and Adult Services

2:15 – 3:20 pm **Physical Abuse Panel: Problems & Solutions**

- Jamie Buckmaster, Manager, Adult Protective Services, Santa Clara County
- Diana Koin, MD, Director, Elder and Dependent Adult Abuse Education, California Medical Training Center, UC Davis Medical Center, Sacramento
- Pat McGinnis, Executive Director, California Advocates for Nursing Home Reform
- Daniel T. Nishigaya, Deputy District Attorney, Santa Clara County Office of the District Attorney, Physical Abuse of Children and Elders Unit
- Michele D. Schroeder, Supervising Attorney, Senior Adult Legal Assistance

3:20 – 3:30 pm **Break**

3:30 – 4:00 pm **Public Comment**

COMBATting ELDER ABUSE: NEXT STEPS FOR CALIFORNIA

A public hearing conducted by the
ASSEMBLY SELECT COMMITTEE ON ELDER ABUSE
December 5, 2003 – San Jose, California

San Jose Hearing Transcript

Welcome and Introductory Remarks

State Assemblyman Joe Simitian, Chair:

...making sure they get to the Capitol and I'll be stepping out promptly at the end of the hearing at 4:00 p.m. to head directly to the State Capitol. Please be assured, however, that the contents of today's hearing will be conveyed to other members of the committee, as well as their staffs. We will be taping all of today's comments, both by our panelists who've been kind enough to join us, as well as the public comment portion of the presentation, to make sure that other members of the Select Committee on Elder Abuse are aware of the information we acquire today.

My thanks, before we get started, to all of the people who were kind enough to help us get today's events pulled together. Some of you are aware that we had help from the Santa Clara County Senior Commission here, but also from the City of San José Senior Commission helped us provide notice as well. San Mateo County Commission, we will be meeting with on the 16th in a somewhat different format, a little more informal, covering a wider range of issues, but we're looking forward to that as well. And there will be another formal committee hearing for the Select Committee on Elder Abuse on December the 10th from 1:00 p.m. to 4:00 p.m. in Santa Cruz County, in the Santa Cruz City Council Chambers. So we will be, I think, getting good representation and input from Northern California in this round. We are hoping then to, later in the two-year session of the Assembly, have a series of hearings in Southern California, where many of the committee members represent senior constituents. And we're hoping to derive from this process some thoughts about what if anything the State can do to combat elder abuse, both physical abuse and financial abuse.

You all know, I think, that the State is in very difficult times financially, so we are looking for things that cost little if any money. There are such solutions out there, I think, if only we would look for them. And we have talked with our panelists, and I would encourage members of the public who speak later today to be mindful of the fact this is a hearing designed not simply to identify problems, but to identify solutions. So we've asked each of the panelists to not only take a walk through the issue of what are the problems that they see, but what if anything might the State be able to do to help. So it's solution-oriented today, as well as identifying the problems.

That being said, let me ask that we have our panelists all in place, which I believe they are. I'm going to ask, as well, that our staff, both Kristina Loquist who will raise her hand, and Melissa Millsaps who will raise her hand as she walks in the back of the room. Thank you. They will be passing out cards to take

your questions, or excuse me, to take your requests for comments. If you are a member of the public and would like to comment, when that time comes, simply fill out a card, we will bring them up front, and I will then call on folks as the opportunity presents itself. I see a couple hands up already. Please feel free during the course of discussion today to simply raise your hand again, and we'll make sure you get a card. Once you've filled it, as I say, we'll put it in a pile and we'll call you up as soon as you know what the possibilities are. For those of you who are feeling a little bit remote in the back, please feel free to come forward. I promise you won't be called on, you're not in class, so you need not feel reticent about that at all. And what I'm going to do now is, as we're passing out cards, I'm going to ask the panelists to provide opening remarks to inform me, my fellow committee members and members of the public who might be here, again starting with a problem statement and offering some solutions. I'd also like you, before you offer your comments, to identify yourself briefly both for the record and as well as for members of the public, and to give a brief description of your role and responsibilities, so we understand the basis for your comments. Thank you again for being here.

I'm going to ask that we begin with Lisa Mancini who will be followed by Jamie Buckmaster, who will be followed by Lori Kratzer, who will be followed by, I think, Cindy Seeley Hendrickson, who will be followed by Helen Karr. So if you go in that order, I think that will help sequence things a little bit. We will also let you know when your time is coming. So let's begin with Lisa Mancini. If you would introduce yourself for the record, tell us a little bit about you and identify problems and solutions in the area of financial abuse, which is the first part of the panel. We will then return to physical abuse after we have dealt with these financial abuse issues. Thank you.

Financial Abuse Panel: Problems and Solutions

Lisa Mancini:

Thank you very much, and thank you for asking me to be here today. My name is Lisa Mancini. I'm the Director of Aging and Adult Services in San Mateo County, which is a division of the Health Services Agency. Under Aging and Adult Services, we house a very large continuum of care for seniors and disabled adults. One of those areas is in protective services, our Adult Protective Services, as well as our Public Guardian, as well as in-home support services and many other case management programs.

All of the services work very closely when we pull together any sort of abuse case that comes into our county. We have established for many years what we call our TIES Line. It's a 24-hour emergency response line. It's Teamwork Insuring Elder Support. From that we've been able to get on a 24-hour level, the number of reports on the different forms of abuse. We're speaking here about financial abuse. I think we all agree that there are many other abuses. We never just really see a case that is solely hit with financial abuse, there's usually some other form, psychological, physical, other abuses that are involved in that area.

A problem that we have seen over the last eight years [in San Mateo County], there has been a 300% increase in financial abuse reports. Our numbers are a little bit smaller than what Santa Clara County

sees, but I think percentages are what tell the story. Of the percentage of the abuse reports that we get, 42% are financial abuse, those that are perpetrated by others. Of those that we received in the calendar year of 2002, 36% were confirmed, and 39% were inconclusive, while the others were unfounded.

An example of a case that we currently have with our district attorney right now waiting for prosecution, and just to give an idea what we're seeing more and more, this is such a rapidly growing crime. A client who is in his seventies who has lived with his mother all his life, who took care of him, and when she died, there was no one left to take care of this very large estate in the millions of dollars. This man did not know exactly who to call on. He had a bad relationship with other family members who did want to step in, who lived out of the area. So he had no one there, except for a man who works as a financial advisor and called himself a financial consultant. [He] got into this man's house, was able to have him sign over all of his assets, power of attorney, which was absolutely inappropriate in this man's condition. He's been deemed to be incompetent to give any medical or legal authority.

When we were finally contacted to get involved, along with our local police agency, we found that within a six month period there were checks written out to this financial consultant for over \$600,000. (He) purchased a new car, the financial consultant a new car, and a range of other gifts. At this point, it's in the range of \$2 million that has been taken from this man. He can no longer take care of himself. As a result of our APS involvement and our police investigation, and the meeting with our multidisciplinary team, we were able to follow through with our district attorney, who has been very fortunate recently that we've been able to take these forward for prosecution.

The difficulty is, at least in San Mateo County, we don't have the ability to have a separate unit in our district attorney's office that can devote full-time to financial abuse. And right now it's becoming overwhelming, and we do need more staff in that area. With the increase in abuse cases, we don't know how we're going to be able to manage that. So those are some of the issues, and as you know, I'm sure we can spend an entire afternoon talking about different case scenarios.

What we have found to help in the solution format is our improved response to reports. The fact that we approach it with a multidisciplinary team, including under one roof we have our Adult Protective Services, our Deputy Public Guardians, our Rep Payee and Public Health Nurses, who are in the same building, who are able to talk about all these cases. What we're trying to do, more and more, is get together these many multidisciplinary teams, so we can get law enforcement in the moment, or we can get the district attorney's office to be there, to understand. If we can approach this together, it's much quicker and easier to solve it.

The other solution that we feel we can work toward, that requires different levels of funding, is an increase in awareness and prevention. We've established an adult abuse prevention collaborative, where we're focusing primarily on getting the word out to the community, getting the word out to seniors and to adults with disabilities, just what the issue is, what's the problem and the extent of the problem. Through that group, we were trying to be very creative because again we don't have the funds that are out there to do as much community promotion as we would like to do.

One area in our creativeness is we put together a drama troupe that went around and did performances throughout the county. This would be a very different way, a very different approach, of showing scenarios of abuse. But again, that is being very creative, very innovative ways of doing things, and we need to find where the funding is to continue with that.

We continue to provide training to our police and fire departments, our emergency medical services because we know they are the ones, they're our eyes out in the community. So are our in-home support services providers on their end, 2,800 in San Mateo County and 2,800 homes, they're the ones who are right there every single day. They can see what's going on. That's—we're hoping for the future, again, through expanded training opportunities for education, to be able to improve that. San Mateo County just passed Assembly Bill 786 to allow us to be a pilot project for uniform assessment. What we're hoping is, if we're able to do this across the county, everybody's going to be assessed to the point where all staff, not just within the Adult Protective Services, but with our whole senior care system, will know what to look for, the signs of abuse. And then, where to go with that.

State Assemblyman Joe Simitian, Chair:

Thank you very much.

Lisa Mancini:

You're welcome.

State Assemblyman Joe Simitian, Chair:

Before we move on to our next panelist, let me just ask a clarifying question. You mentioned a 300% increase in reports, I believe it was financial abuse, over an eight year period. Am I correct?

Lisa Mancini:

That's correct.

State Assemblyman Joe Simitian, Chair:

Do you have any way to know whether most of that increase should be attributed to an actual increase in the incidents of financial abuse, or whether we're simply getting more successful at encouraging people to report cases of financial abuse?

Lisa Mancini:

Where we've really seen an increase is from 1999 and to the future. And that is because that's when the mandated law was passed. The Senate bill was passed regulating elder abuse as a law. And from that point is where we've really seen an increase because the word has gotten out. And also, in San

Mateo, which I think is the same as Santa Clara County, we may not be cash rich, our elders may not, but they are property rich with the increased value, and sad to say, family members, caregivers are very aware of that. So, we've seen that just recently over the boom in the last five to seven years.

State Assemblyman Joe Simitian, Chair:

Well thank you. I think that's helpful, and frankly, it's, you know, looking for a shred of good news in this conversation. The notion that in fact legislation has made a difference in the incidents of folks coming forward to report the problem when it exists, I think is encouraging, and suggests there are things we can do that will help protect folks in this situation. Thank you again. Let us go now to Jamie Buckmaster, and ask Jamie if you will share your comments with us today, as well as a brief introduction of yourself for the public and for the record. Thank you.

Jamie Buckmaster:

Thank you, Assemblyman, Committee. My name is Jamie Buckmaster. I'm the manager of Adult Protective Services for Santa Clara County. APS is one of the programs in the Department of Aging and Adult Services, which is part of the Social Services Agency. I think everyone on the panel here would say financial abuse is on the rise. Not only in national trends, but it's a trend we've seen in Santa Clara County just like we've seen it in San Mateo County, which is one of our contiguous counties. In this particular county, financial abuse has increased over the last few years, and is now about 35% of all the reports that we take. And in this county, we take, last year 2002—calendar year 2002, we took about 2,100 reports. And so you can see that's an awful lot of financial abuse reports in the county. We are vulnerable. Our elders are vulnerable because of the price of homes here. And there's a vulnerability quotient that goes with that, the aging of the population mixed with the value of the homes here. And homes in this county, like San Mateo County, are the single largest asset that an elder has.

It's commonly said that only 1 in 14 incidents of abuse actually gets reported. With financial abuse, we believe it's more like 1 in 100. Probably because the typical financial abuser of an elder person is their adult children. From 60% to 90% of elders that are abused, it has turned out to be their adult children or some other relative. We do see some caregiver financial abuse, and certainly see many scams out in the community. And, we're concerned about all of it. Not only is it because we want to prevent financial destitution, but the Journal of the American Medical Association study has shown that an elder who faces financial destitution has a three times higher mortality rate than a non-victim.

In terms of solutions in this county, we have for the last almost five years been managing the financial abuse specialist team. We call it FAST. It's a unique multidisciplinary team made of four partners. Those partners are Adult Protective Services, the Public Guardian/Conservators Office, County Counsel, and the District Attorney's office. And in fact, you're going to hear from one of my partners, Cindy Hendrickson, later about the District Attorney's office. These four partners have come together and have developed a rapid response team. We, like San Mateo County, are 24/7, and consider financial abuse emergency response in this county.

One of the—there's many reasons why FAST works. We all know our own roles. APS assures the well being of the client, the District Attorney's Office successfully prosecutes the cases. County counsel not only represents each of the parties in the partnership, but also represents our conservatees in terms of any civil suit. And lastly, our Public Guardian/Conservators Office in California has the ability to use Probate Code Section 2901 to freeze assets immediately if we believe that the team may move for conservatorship on someone who's lost capacity in the next 15 days. I'm proud to say that the FAST team, the rapid response team, has prevented the loss of and recovered as of this week, \$106 million in this county alone.

We've taken this unique partnership and developed other kinds of solutions in the community. Back in December of 2000 we published the law enforcement protocol with the 15 different jurisdictions in this county. Very comprehensive. It's the largest law enforcement protocol in the State of California. And, we're happy to say, the Department of Justice in the State of California will be using that law enforcement protocol as a model for the state. In addition, we recently started the financial institutions team which has basically a sole purpose to train bank and financial institutions staff to spot elder abuse. Because, typically, they know their customers. They're one of the first ones, they're kind of the front line on spotting elder financial abuse.

State Assemblyman Joe Simitian, Chair:

I apologize, I still had my head in your previous comment about the law enforcement protocol, and the name of that process or program is?

Jamie Buckmaster:

The financial institution team?

State Assemblyman Joe Simitian, Chair:

Yes.

Jamie Buckmaster:

Yes, we call it the FIT team. And basically our department is partnered with financial institutions in our community to train their folks to spot financial abuse in its early stages. One of the things I'd like to emphasize, in terms of the solution, is prevention is the key. Once the money starts to move, once the perpetrator has the money, it can be very, very difficult to get that money back again. And that's why we do FAST. We move quickly, we move carefully, and we emphasize prevention. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you. Let me just follow up if I may on the law enforcement protocol. What kinds of issues are covered in the protocol? And how is the world different as a result of the protocol being in place, than it was before the protocols weren't in place?

Jamie Buckmaster:

Well, one of the things the protocol does is look at the nine types of abuse that actually get reported through Adult Protective Services. Law enforcement is compelled to cross-report to us, as we are to cross-report to them. And report to them any suspected criminal activity. Essentially, what it was was a gathering of the minds from the law enforcement perspective, to kind of standardize the way we would approach investigation of elder and dependent adult abuse in this county.

State Assemblyman Joe Simitian, Chair:

And when that standardization occurs, is it your sense that that's valuable because what we've done then is put best practices in place across jurisdictions, or is it helpful because different jurisdictions were able to cooperate more clearly and more effectively because we're all speaking the same language? I mean, what is it you see as the net improvement or value added to the process as a result of the protocol?

Jamie Buckmaster:

The first most important thing, from my point of view, is just the education about elder abuse. There are many folks out there that feel, don't really think elder abuse exists. And we know we're just at the tip of the iceberg. So, it brings to the attention of law enforcement the subject of elder and independent adult abuse. And it standardizes the investigation of that for each of the jurisdictions and that can be carried over to the prosecution side. So it really is a best practices model, but starting with just the education piece, back in 2000.

State Assemblyman Joe Simitian, Chair:

Thank you. And thank you very much for your remarks.

Jamie Buckmaster:

Thank you.

State Assemblyman Joe Simitian, Chair:

Let me ask now if we could ask Lori Kratzer to introduce herself and share her comments.

Lori Kratzer:

Yes, hi. I'm Detective Lori Kratzer with Palo Alto Police Department. And I do elder abuse investigation among other things. And thank you for inviting me here today to speak on the subject. What I would like to say, to begin with, is I think for law enforcement that we're at the tip of the iceberg. And Jamie was just talking about law enforcement protocol and consistency in investigations. And I think what we're seeing is such a dramatic increase in cases, partly because of education and training of all professionals that deal with elders. But, in part, it's because of training and education for law enforcement. But I think we have a long ways to go. I think the county protocol is an excellent document. But I think a lot of departments are just understaffed and under trained when it comes to elder abuse investigations. Many times there is lack of understanding, I think from law enforcement's point of view, or interest in this area. I kind of relate it to where law enforcement was maybe twenty years ago in relation to child abuse investigation, or domestic violence. And I think it's an awareness level that's really important for first responders to understand—and that includes fire and paramedics—because many times patrol officers and fire department paramedics are the first responders to situations regarding elder abuse.

I can speak for Palo Alto. We've had a dramatic increase in reported cases since 2000. And it's probably in the range that Lisa was speaking of in the 300%. But still, those statistics I think are lower than what's actually out there. I'm not sure if it's so much a matter of these crimes increasing. There's a shift in population because of an aging population. And once again, I think it's education of professionals in the mandates that the state has in place to report these crimes.

Regarding financial abuse, we see cases where elders are basically targeted from every imaginable angle. If it's not a family member, it's going to be a stranger or a caregiver, or it's going to be a telemarketer, it's going to be a lottery scam. It's going to be a sweetheart scam. All these types of crimes are targeting elders from every direction. And, yes, part of it is property values, but a lot of our elders are living off of pensions. I see elders that have been targeted that are homeless, that are getting pensions. They're actually getting targeted with scams through the mail, then sending money off to crooks basically. So, it doesn't seem to stop. And, I think there are solutions that could be put in place.

I think one of the most important things that we've all been talking about is teamwork. And within budget constraints, I could see doing a lot more with what we have without having to spend a lot more money. Part of the thing is, I think it's so vital for law enforcement to be teamed up with Adult Protective Services, Public Guardian. I think it would be ideal to see actual teams in every police department, with a social worker, a public guardian. It would be great to have a medical person on board also to actually go out as a team to assess and use all our resources and authority to approach these cases. Because for law enforcement, I think one of the biggest problems is that cases are so complicated and extremely time consuming, and you need specialized detectives or specialized units to actually approach investigating, especially the financial abuse cases. I think a lot of patrol officers, it's a matter of recognizing the case, getting it initially reported, but I think you also need specialized units to do the investigation.

Another thing I would like to see. Fresno has a forensic elder abuse center where actually law enforcement, APS, I believe public guardian, the DA's offices are all housed in the same building. And I think that would be an ideal approach. It's actually sort of similar to domestic violence where you have a family violence center. You could look at that same sort of concept for elder abuse. And actually bring in law enforcement and other agencies to work together, and have a place for say, in an emergency situation, an elder can be brought to the center. If it was a patrol officer or a paramedic, they could actually bring an elder to that center or come there for advice on a case. So you could get all the professionals working together.

I think another big issue for financial abuse cases, for a solution, would be to get the banks on board for mandatory reporting. In Palo Alto, for example, I have a case where one senior was scammed by a Canadian lottery scam, and went to her bank and wire transferred \$590,000 in one fell swoop to an offshore bank. I think it's awfully important to have the banks report this kind of suspicious activity for a senior to law enforcement immediately, and to stop this kind of abuse, because that amount of money in one case, I think, is not unusual, necessarily, and these go very commonly unreported.

State Assemblyman Joe Simitian, Chair:

Could I ask, could I interrupt for a minute? What is the current reporting obligation of the banks and financial institutions? None?

Lori Kratzer:

None. Absolutely none. I can tell you we get calls from the banks that someone is trying to pass a bad check, but for an elder either being brought into a bank by a crook, sometimes they'll actually escort the elder into a bank. Many scam artists do that. Or an elder, like I just was referring to this case, where she wire transferred \$590,000 of her retirement savings at one time, without the bank manager picking up the phone and calling the police. To at least notify us that there's suspicious activity there with this senior. You know, basically shipping off her entire assets to offshore crooks. I see it over and over, and I think other professionals and the DA also sees this as a large problem. Very difficult to go back and try to stop the money flow after it's gone.

State Assemblyman Joe Simitian, Chair:

One of the challenges of a term limited legislature, of course, is that some of these issues get discussed prior to the arrival of members, and new members arrive. Is this an issue that has been discussed legislatively in the past? I suspect it has. And I'm suspecting as well that part of the resistance was with respect to confidentiality in a financial transaction.

Lori Kratzer:

Uh-huh.

State Assemblyman Joe Simitian, Chair:

Okay, thank you. If there are others who have comments about this particular issue or approach as we go through the conversations today, I would appreciate hearing about it. Detective Kratzer, I did not mean to cut you off, but I wanted to make sure I didn't let that go unexplored. Go ahead.

Lori Kratzer:

Thank you. No, I believe I'm finished. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you. And one other question I had for you is you emphasize the importance of teamwork between and among various departments and agencies. Are there impediments to that kind of teamwork, now, that get in the way? Or is it simply a question of folks taking the initiative to make sure those relationships get established?

Lori Kratzer:

I think it's connected with training issues for police officers to have a broader understanding and an interest in this area. Speaking for myself and for Palo Alto, it's been a great team effort working with Adult Protective Services, with Cindy Hendrickson, our DA, public guardian. But I feel we're sort of different. I don't see a lot of police departments doing that. And I think there should be give and take on both law enforcement and social services, and public guardian, to try to combine our efforts—to physically be in the same room together, so we know each other and we can actually approach these cases together. And it wouldn't cost anything. (It is) just a matter of offering. I think it would social services being able to be housed in police departments, at least some that would specialize on a team like this.

State Assemblyman Joe Simitian, Chair:

All right, thank you very much. Let me ask now that we hear from Cindy Seeley Hendrickson. Welcome and thank you.

Cindy Seeley Hendrickson:

Thank you. I'm Cindy Seeley Hendrickson, and I'm the Deputy District Attorney for the County of Santa Clara. And I've been assigned to the elder fraud unit since 1999. I've identified three problems, three main problems that affect law enforcement. Number one, as other speakers have already touched on, is that we just have more potential victims. You may already be aware of the statistics that by 2020 the number of people 65 and older in California is going to double. But here in Santa Clara County I saw my caseload increase from 1999, a caseload of thirteen, to now 2003, a caseload of over seventy cases. And my partner and I have handled 197 cases in the last four years or so, and that's not including

the cases we've investigated that didn't result in prosecution. And, of course, other speakers have touched on the reason for the increase in elder fraud cases: we have more elders, there's increased wealth (among elders). Also, families are more spread out, and isolated people tend to be more likely to be victimized.

The second problem that we have in the area of law enforcement has also been touched on by other speakers and that's the problem of underreporting. Jamie covered the fact that a lot of people perceive this to be a family matter because so many of the perpetrators are family members. There's also the factor of shame and embarrassment that a lot of the victims feel. They don't want anyone to know. And some express the fear that if the kids find out, the kids might try to take away their independence.

There's another phenomenon that causes this underreporting and that is that there's often an element of love, trust, or dependence, or even fear between the victim and the perpetrator. Often because the perpetrator is the caregiver, there's a tremendous concern on the part of the victim. What's going to happen if the perpetrator leaves? Finally, another reason why these cases are so underreported to law enforcement is that, a lot of times, the victims are just unaware, either because they trust the perpetrator so much, or because they suffer from some sort of mental deficit that just precludes discovery of what's going on.

And the third problem that I've identified that particularly affects law enforcement is the fact that Lori, one of the facts Detective Kratzer touched on, the fact that elder abuse investigations require so many resources. One of the reasons they require so many resources is because in the area of elder abuse, law enforcement has to be a lot more proactive than other areas. For example, in a regular case, an officer will wait for a victim to come and report a case to them. So the investigation begins with some evidence of a crime.

With respect to elder abuse cases, many or most elders are unwilling or unable to report the crime. So, a lot of times, the initial investigation is initiated based on a phone call from a suspicious neighbor who doesn't have any confirmed facts. But we still have to investigate those cases. So, in those cases, we're beginning an investigation based on mere suspicion. But we have to do that because if we sit there and wait for a victim to present a case to us, we're going to miss a lot of righteous cases. So we end up spending a lot of law enforcement resources on cases that don't result in prosecution. Another reason why we have to get involved, why law enforcement needs to get involved, before there's clear evidence of a crime is because we've been, when we do that, we've been tremendously successful in thwarting the crime. When Detective Kratzer shows up at someone's door, that often has more of an effect than if a social worker who doesn't carry...

State Assemblyman Joe Simitian, Chair:

It would have an effect on me, I can assure you, if Detective Kratzer showed up.

Cindy Seeley Hendrickson:

Another reason why law enforcement investigations require so many more resources, again, as Detective Kratzer pointed out, they tend to be so much more in-depth. And, I felt the best way to explain this would be to give you an example of a typical case that we'll see. I had a case recently that I prosecuted that involved a thirty year old man who befriended an eighty year old woman who was suffering from mild dementia, at first. She was isolated, she didn't have any family and she didn't have a good command of the English language. The defendant moved in with the victim. He offered to arrange for the remodel of her home. He took her to shows in San Francisco. He took her out to eat and fed her food that nobody with diabetes should have ever eaten. And he was giving her back rubs. He, the defendant, opened about ten different accounts, some in his name, some in the victim's name, and co-mingled his salary with the victim's money. And he moved money back and forth among the ten different accounts. Two years later, it turned out, the victim's home and her condominium, were both in the defendant's name, and \$474,000 of her assets were unaccounted for.

Initially, the victim, in her statements, indicated she was unaware of any of those transactions, but because she loved, and to this day, loves the defendant so much, she later said "I gave him everything." So what that case, what the investigation of that case required was an initial interview of the victim to try to get a sense of what was going on, to find out where she kept her money. When we found out where she banked, that maybe was one account, we ended up, my investigator had to do a lot of investigation to track down those ten accounts, had to do search warrants to get ten different bank accounts, separate bank account records. And sometimes you would get bank account records from one account and then you'd see where money went to another one. Very tedious. And then my investigator had to analyze the bank records to figure out how much money was unaccounted for. We also had to obtain real estate documents that showed the transfer of the real property.

There was a neuropsychological exam done of the victim to confirm the mental deficit. Lots of interviews were done, nurses, neighbors, bank personnel, public guardian personnel (this was a FAST case, the public guardian conserved the victim), people who were listed on checks that went out of the victim's account, anybody who was a witness to the relationship between the victim and the defendant. Because what we're looking for, and we didn't have the victim's assistance in this, is did the victim know about the transfers, did the victim consent to the transfers, and if she appeared to consent, was that really an informed consent? It takes a minimum six months of investigation to complete the investigation on a case like that.

And another reason why elder abuse cases investigations require so many resources, as Detective Kratzer said, law enforcement has to be specially trained. All those items of investigation, that I just mentioned, are not going to immediately come to mind to somebody who's just rotated into a detective assignment. Also, investigators need to be specially trained. There are certain tools, some thanks very much to the Legislature, that we have available to us. There's Evidence Section 1380, which became effective in 2000, is tremendously helpful to us. It allows for a videotape statement of the victim to be admissible if the victim either dies or becomes unavailable at the time of trial. And that recently withstood a constitutional challenge just this year.

We had a case recently where the warrant went out in 1999, the investigator had attended training and knew what he was supposed to do. He got a videotape in 2000 and the defendant was finally arrested in 2003. By then the victim had been moved to North Carolina, but the defendant ended up pleading guilty on her first court appearance because the detective from San Mateo, the Sheriff's Department Detective Mahr, had been on the ball enough to do that videotape. So, but the detectives have to be specially trained to do these things. Also there's a Penal Code section that allows us to examine the source of bail, so that the defendants don't use the victim's [money] to bail out. Now, again these are things that are not just going to occur to any police officer if they haven't been specifically trained.

These cases, as I've already illustrated, it's very specialized investigation where you're looking at things beyond what does the victim say, you have to look at all the circumstances. Also, the FAST team which has been, I think, the lynch pin of our success in Santa Clara County requires staffing. I mean, there has to be investigators who are available to attend the bimonthly meetings, available to respond quickly. So, again, these take resources.

What I would suggest, turning now to the solutions portion, I think as it's already been mentioned by other speakers, of course, education and some of that we're already doing. A lot of that we're already doing. Education of the public, to groups of seniors, civil attorneys, bank personnel, nurses with two goals in mind for that training, to not only prevent losses from occurring, but also to encourage the reporting of these offenses once they occur. Also, education of law enforcement, for three reasons, to help them understand this need to be proactive because it really goes against what officers are typically trained. And then the second thing is to help officers recognize criminal elder abuse cases and not tell the reporting parties, no "that's just civil, go see a civil attorney." And third, to teach them how to do these specialized investigations.

I would also, what would be wonderful, and this has already been mentioned by a speaker, is legislation that had permissive reporting. I think the banks are resisting mandatory reporting, but some of them have said to me that they would like to report, but they're afraid of being sued by their customers. So, legislation that would allow more permissive reporters, particularly banks and civil attorneys, would be helpful for us.

Another, I guess this would be more of a solution, this would be more of a need, but with respect to investigative resources, what we really need is dedicated investigators, and that means investigators that are assigned just to elder abuse cases. Because, what happens is, when you have a detective who has a general caseload, the elder fraud cases, because they are so labor intensive, they tend to stay on the back burner. Because an officer waits until they have time to really get involved, and a lot of times that day never comes. I don't know whether or not legislation could be fashioned to mandate the different agencies have dedicated detectives. It may not be possible in all jurisdictions because some agencies are very small. But perhaps legislation that said any city above a certain population would have to have an elder fraud unit. Because I know we've seen here in the county a big difference from city to city, depending on whether or not there is a dedicated elder fraud detective. In Palo Alto we've had a lot of success because they have had Detective Lori Kratzer, for example.

A third area in this conversation about solutions and needs, or solutions to the needs, within the area of prosecution resources, what we also need is dedicated deputy district attorneys. People who are assigned just to elder abuse cases. And depending on the size of the county, you often need more than one because when one of these cases goes to trial, it could tie the DA up. One case could tie the DA up for a couple of weeks. Our county requires at least two full-time deputy district attorneys. Also, in the same column of prosecution resources, these cases require DA investigators, not only to staff the FAST team, but also to be able to respond quickly, to be able to handle or help with really complicated cases, that sometimes the smaller agencies would be just overwhelmed by. And then, also, to help or assist in cases where the cities where the detectives in the smaller local agencies just haven't had as much experience as our investigators who have been specifically trained. And the third personnel, type of personnel, we need in the DA's office to work on these cases is paralegals. They're tremendously important for intake, also to analyze business records. We have a big case that just came from Stanford where my paralegal has gone, sifted through voluminous bank records to figure out the extent to which an embezzlement occurred. A task that no detective in almost any agency would be able to undertake. And then finally paralegals are very important for witness coordination. There are grants sometimes available, and that makes me think perhaps there could be, just as I suggested, legislation to mandate elder abuse units in the detective bureaus. If there could be some legislation to mandate that counties above a certain size have dedicated deputy district attorneys, investigators and paralegals that would work only on elder abuse cases.

In our county, of course, we're very very fortunate because we have the complete commitment and support of our, of my boss, George Kennedy. And also the FAST team is successful because we've got the support of Betty Malks, the Director of the Department of Aging Adult Services, the Manager for Adult Protective Services, Jamie Buckmaster. We've also got the complete support of our Public Guardian Rob Cecil and his predecessor, Les Lindop. And also, the complete support of county counsel, and specifically in this county, Larry Kubo and Denis O'Neal. Other counties are not so lucky. And what I've seen in traveling around the state and teaching on topics related to elder abuse, is that there's a tremendous disparity in some counties, where detectives will tell me, "The DA won't issue this kind of case. We don't have detectives to work these kinds of cases." And that's why the idea of some sort of legislation that mandates an emphasis on these types of investigations and prosecution comes to mind.

I want to conclude by saying, that if we don't have the resources to aggressively pursue these cases, then what happens is we actually send a negative message to the public that these cases are either not criminal or they're not important. And that's precisely the opposite message that we've been working for almost five years to get across.

State Assemblyman Joe Simitian, Chair:

Thank you very much. Our last speaker on this panel is Helen Karr. Helen, if I could ask you to introduce yourself and then share your thoughts with the public, as well as members of the committee, who will have access to the results of today's hearing.

Helen Karr:

Thank you Assemblymember and Committee for inviting me to be on this panel. I'm Helen Karr and I'm an advocate for the seniors. I volunteer over 1,000 hours a year working in the area of elder abuse, and educating seniors and the public about it. I work in the San Francisco District Attorney's Elder Abuse Unit, and I also work for the California State Bar. I did the research on their latest publication, Seniors and the Law. I'm a San Mateo County Commission on Aging commissioner, and a commissioner on the California Commission on Aging. And I'm also a California Senior Assemblywoman. So, I'm rather busy. But my whole focus is elder abuse.

California has many gaps in elder financial abuse legislation. There is little or no monitoring of elders' financial documents that are most frequently abused, such as the power of attorney, joint tenancy and other bank accounts. Because these devices permit massive theft and are tools used by the exploiters to quietly steal the life savings and the homes of our senior citizens. Because banks and other financial institutions, mortgage brokers and realtors and title companies refuse to get involved, perpetrators have a license to steal. So, you've heard some examples about elder financial abuse, and I heard one yesterday that involved the long-term care insurance, and a person who posed as an attorney became her financial advisor, and ended up getting all her property, which included her rental property. Therefore she didn't have any money left in the bank, and she didn't have any money coming in.

The majority of abusers, are—60%-90%—are those who care for an elder. They're either paid or unpaid or a family member. And these people are in a position to take over the bank accounts, the bank credit cards, and obtain bank loans using this elder person's property as collateral. And they don't think twice about forcing the transfer of the deed of the senior's home. And elderly persons, you heard earlier, are likely to hide the abuse for a lot of reasons—that they're isolated and they're threatened and as people get older, they don't really have to be demented to be taken advantage of. You can think of a day when you've been very very ill. And think about how easy it would be for someone to take advantage of you, at any age, when you're just not feeling quite up to par. And as you heard earlier, financial abuse, most often leads to diminished health, because once your money's gone and your home's gone, you have no way to recoup any money or to get another home. And you lose your dignity. And a startling number of elderly Californians become impoverished, and they die. And I know personally of cases where the person has died because this crisis keeps going unchecked. And we know that the California Legislature has already recognized the state's responsibility to protect these elders from abuse, neglect, and abandonment and has recognized that because of physical or mental impairment, older adults and dependent adults are at risk of abuse.

So, the California Elder and Dependent Abuse law was modeled on child abuse law. So that was our first problem, because it focused more on the physical abuse and not the financial abuse. And as you've heard, and the statistics show, it's financial abuse that is probably the underlying motive for 90% for all abuse. And recently the National Center on Elder Abuse—they have statistics, and they also said that 1 in 14 incidents of elder abuse come to the attention of law enforcement. So if you want to use just that 14%, and we know it's higher than that for financial abuse, if we have 3.7 million seniors today, aged 65 and older in California, that means 518,000 incidents of elder abuse are occurring right now. If you

double that, you're going to have a million cases of elder abuse by the year 2020. And most of these victims are ages 76 to 90. It's documented that as our population ages, the abuse is going to increase, and the financial exploitation is going to dramatically increase because, and I'll quote "with the median net worth of an average assets minus liability, with the median net worth of older households at twice the national average for all households, financial criminals will follow the money."

The National Center on Elder Abuse indicated 40% of their verified incidents of elder abuse involve some form of elder abuse. And San Diego said 50% is elder abuse and the state of Delaware says it's 84%. So we do know, according to Chayo Reyes, a retired Los Angeles police investigator, that financial abuse is the fastest growing form and it's the most prevalent. This is interesting, to compound the problem "violent crimes get all the attention and people forget about how serious financial crimes against seniors are. The average amount stolen in bank robberies is \$2,000, for which the robber faces a federal charge and heavy jail time. The perpetrator of elder financial abuse averages \$30,000." This is a national figure, "and is rarely ever reported, let alone caught."

So it's a terrible situation. However, we have some good news. The solutions I feel are, number one, to educate our legislators, our law enforcement, our seniors and the public about elder abuse. And one of the ways we can do this is wear this gold elder abuse awareness pin over our hearts to let people know we really are concerned about people in their golden years. And then, the most important key to fighting financial abuse is to mandate financial institutions to be vigilant and report suspected cases to social services, or law enforcement. They have the custody of people's money. So banks, credit unions and other financial institutions are the most important line of defense. And the bankers know this is a problem because right out of their banking journal I can quote, they say the number one indicator of financial abuse is unusual activity in a bank account. They go on to say, "in order to live up to customer and public expectations to prevent fraud, to protect deposits, and strengthen their relationships with customers, retail bankers need to know how to identify situations in which exploitation is likely to occur, as well as the types of transactions." Because that makes a difference, "which are suspect, and they also need to know how and when to report suspected exploitation."

There's a new report out, there was a summary done by the State Adult Protective Services Responses to Financial Exploitation of Vulnerable Adults—that's a 2003 report, and that was prepared by the National Center on Elder Abuse. And they had 34 states and Guam respond to their survey, so they have some more statistics for you. And they also state that special efforts need to be made when you involve all professional financial service providers in the process of identifying and reducing financial exploitation. The good news is, that in an opinion letter regarding the legality of Michigan's bank reporting procedures, the seven federal regulatory agencies, who are responsible for enforcement of the Gramm-Leach-Bliley Act, that's the privacy of financial records, stated that reporting suspected financial abuse falls within the exception to the act. So the only excuse the bankers are using that they're liable doesn't hold water any more. Any state can ask their congressmen to have an opinion for them on how this would affect their state. I mean, Michigan's got an opinion and so California can get one. Three states – Florida, Georgia and Mississippi – already include banks as mandatory reporters.

State Assemblyman Joe Simitian, Chair:

Would you repeat the states please Ms. Karr?

Helen Karr:

Uh-huh, Florida, Georgia and Mississippi.

State Assemblyman Joe Simitian, Chair:

Thank you.

Helen Karr:

What this report also pointed out is the existence of mandatory reporting law may actually protect the bank from liability. And that is what I've always said all along because if you are, by law, if you have to report something you are protected from any liability. And actually the liability they have now is very, it's very minor. If there was something, they can't ever, the bankers can never seem to give me any cases that they could point out where they were harmed with this. And if they could, it's a misdemeanor and maybe it's a \$1,000 fine. And that's nothing when you're hearing millions of dollars going out the door of the bank. And it's only going to get worse. I'm almost through. Here's another, and I want to quote this person, because she is in California and she's an executive vice president of a credit union in California. And she says, "Banks are likely to have more protection from liability, if they make reports under a mandatory reporting law, than under a voluntary reporting law." And she goes on to say "We are very much in favor of this type of mandatory reporting legislation." She currently has a training program in place for their staff. She says they have to be careful because they're not mandated reporters. She says this type of legislation would protect her from liability, if they were wrong in their suspicions. And she says, "We do understand many financial institutions do not view it this way, but just another legal requirement, responsibility and expense they don't believe is their domain."

This is another argument I have, the banks are very quick because they are liable if somebody steals my credit card number and uses my credit card. The banks are liable. So they have a real clever way of calling me even when I use my credit card in a different place than I've ever used it. I think the argument that if they can be that sophisticated, they can certainly be sophisticated enough to monitor older people's bank accounts. Then in Utah, who is really, really happy with it, we've had a number of very successful results from the banks reporting. I think having the mandatory reporting law definitely helps. And here's what's interesting. It pretty much ends the discussion about whether a bank should report, and it changes the focus of what they need to do to report, and how we can work together to help provide our customers with protection provided for in the laws. So the good news is even though we have a lot of this, we can certainly have some legislation to mandate our financial institutions to be reporters of elder abuse. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much. Let me ask if, before we take a break, we can bring our next panel up to talk about physical abuse? Let me ask if there were comments by panelists that prompted a reaction, or one more thought from others on the panel? Additional comments if any?

Cindy Seeley Hendrickson:

Assemblyman, I would just echo what Ms. Karr said about the sentences. I've heard that quote about \$2,000 being the average amount taken in a bank robbery and, of course, the penalties are way more severe. Just to let you know, usually in this county, and this county is very conservative, this is one of the better counties in the state, to be a prosecutor anyway. Still, if someone steals under \$100,000 they're probably looking at jail. They really need to steal usually more than \$100,000, unless they've got priors. So, ...

State Assemblyman Joe Simitian, Chair:

Jail as contrasted to prison time?

Cindy Seeley Hendrickson:

Before they go to prison.

State Assemblyman Joe Simitian, Chair:

Okay. Yes, Ms. Mancini?

Lisa Mancini:

Thank you. I would also like to echo something that was said regarding the law enforcement and having there be some sort of legislation or mandate for an elder abuse unit. We do have a multidisciplinary team meeting where we meet with our 23 jurisdictions. The problem is there's a rotation, so once we finally get someone who's right there with us on elder abuse, then they're rotated off to a different assignment.

State Assemblyman Joe Simitian, Chair:

Like serving in the legislature. Good. And is there a solution to that problem, in all seriousness? Is it simply to ask the affected agency...

Lisa Mancini:

It's actually something to ask the affected agencies. We have put in special requests when we've had certain detectives on board who we wanted to rotate again, back onto the same shift. We have talked

with their chiefs. We were able to be successful in one instance. And I just don't know what could be done with that.

State Assemblyman Joe Simitian, Chair:

Detective Kratzer?

Lori Kratzer:

Yes, just to comment on that. I think training and cross-training patrol officers and detectives, most departments do rotate, that's supposed to be the modern way we do things, where you don't stay a detective your entire career. But, with these complicated cases, I think patrol really needs to be educated and trained, maybe not in the fine specifics of it, but when you have detectives going back to patrol that have all this experience. You also have a great resource out there for detecting cases that are, you know, going to be reported at patrol level. And I would just say more detectives, I mean, that's hard to say because most departments can't do that right now.

State Assemblyman Joe Simitian, Chair:

It's a good news-bad news proposition. The good news is you have a wider range of your folks who are aware of and capable of responding to these issues. The bad news is you're constantly obliged to educate and inform new folks who are coming in to critical roles in the process.

Lori Kratzer:

I really think we can do more with what we have now without spending a lot more money. I can't emphasize that enough, because it's just, it's a training issue, it's an educational issue, and it's the collaborative work with other agencies, like APS and public guardian to refine it a little bit. And actually we could do a heck of a lot more with what we already have.

State Assemblyman Joe Simitian, Chair:

I'm outside my area of expertise and training, but is there a role for POST, the Police Officer Standard in Training, in this area?

Lori Kratzer:

Yes, we do have mandated training. I actually do training myself and have trained our first responders from the fire department, paramedics and our patrols, and other detectives in this area. But I think every department needs, we need to start this more at the academy level, also. Because this isn't going to get better, it's going to get worse just with the population shift.

State Assemblyman Joe Simitian, Chair:

Thank you. Any other comments? Just a couple of brief comments before we take a very short break and bring our next panel up. First, to say thank you to the panelists. We were really richly blessed to have a very capable group here to inform, not only my thinking, but also that of my colleagues and members of the public who are here. Thank you very much. I neglected earlier to say thank you to the County of Santa Clara for hosting us today in this facility, and I want to thank them. They're always very gracious and helpful in cooperating with the state whenever we've made a request and I want to thank them for that.

I want to highlight a couple things that came up as we talked. I think it was Ms. Mancini (who) mentioned AB786, just in passing. For those who are unfamiliar with the legislation, this is a measure that my colleague Lynn Daucher, who is a member of this Select Committee and who chairs the Assembly's Aging and Long-Term Care Committee. She was the principal author and I was a joint author with her. It was an effort to look at some of these issues. And to use San Mateo County as a pilot project, if you will, to see (if) there are ways to allow more flexibility and more creativity in responding to some of the issues involving elders. I would encourage you, if you haven't taken a look at the legislation, please do, and if you need help in identifying how you can access that information, my staff in the back, Ms. Loquist, who you saw earlier, and Ms. Millsaps, who you saw earlier as well, would be happy to get you to AB786. It was something I was very happy to work on. And Ms. Daucher really deserves the lion's share of the credit for her lead on the measure.

The FAST teams that were discussed, I'm pleased to hear they're still working well. This was an area where I had the ability to do some work when I was on the Board of Supervisors. In fact, some of you will know, but many of you may not, in my first year in the State Assembly, I authored legislation to try and expand the FAST team concept around the state and provide some financial incentives. It was well received in the State Assembly but by the time we got to the State Senate, the state's financial situation had made itself more than a little evident. I'm afraid we were stymied simply by the lack of resources. Two other developments in this area, before we get to the next panel. Last year—2002, I was able to win passage for a new law increasing penalties for elder abuse and physical abuse, and that may come up in our next panel. I was pleased about that. This year, Assemblyman Steinberg and I joint authored a bill to try and make sure that secrecy wasn't a problem with respect to abuse in nursing homes. So we made some progress there, and more in the physical abuse area than the financial abuse. But these are some areas where my colleagues and I have been trying to do some good work. If you have an interest in any of the things I mentioned, please see my staff.

I want to recognize, I know Assemblymember Sally Lieber has staff here today. And I want to thank her for sending members. I don't know if there are other legislators who have staff here with us today. Could we ask you to just stand and identify your office please, if you're here on behalf of another member of the Legislature.

Thank you. Others?

Thank you to you all for being here, thank you to your members. As I mentioned at the outset of the meeting, other members are being called from around the state to be in special session later today, the very place I will be headed immediately upon the conclusion of this hearing. So we thank you and your members for sending representatives. There will be a copy of the tape available to share, and both with your staff colleagues and the members. I find it a useful way to use the drive time between the Bay Area and Sacramento. Thank you again to our panelists. If I could ask members of the public to join me in giving them a round of applause and thanking them for their comments. (APPLAUSE). We will take a five-minute break, and that's a real five minutes, not a government five minutes. A five-minute break and we'll be right back. Thank you.

Physical Abuse Panel: Problems and Solutions

State Assemblyman Joe Simitian, Chair:

If we could ask members of the public to take their seats, please. And if we could make sure that Michele Schroeder is in the front and center and ready to present, and Daniel Nishigaya, Pat McGinnis, Diana Koin and Jamie Buckmaster for a return engagement here. If we could ask you all to take your seats. Could I ask members of the public to take their seats, as well. Shhhh. All right, thank you very much. We are now about to start our second panel. This is the panel dealing with issues of physical abuse, looking at problems and solutions, underscoring solutions in this case. We will again go through the five panelists. I'm going to suggest we start with Pat McGinnis, as our first panelist. She's racing back so she can be the first panelist. Put her on the spot there. Sorry, Pat. And then to be followed by Michele Schroeder, to be followed by Jamie Buckmaster, to be followed by Daniel Nishigaya, to be followed by, I believe that leaves, Diana Koin. Let's do it in that order then.

We will, again for those of you who arrived late, as I mentioned, my colleagues on the committee are from all around the state headed to Sacramento. We have a special session of the Legislature later today about what you may have been hearing. That will mean I will (be) stepping away promptly at 4:00 p.m., as well, to get back up to the Capitol. The comments today are being tape-recorded and will be shared not only with the other offices, but with their staffs, as well. We do have representatives from a number of legislative offices who are here so they can brief their representatives from both the State Assembly and State Senate. I want to thank Assemblymember Lieber and Assemblymember Manny Diaz and Senator Sher for sending representatives to today's hearing. All right, then. Let's begin with Pat McGinnis. Pat, if you will introduce yourself briefly, so we know the perspective you bring to bear, and then talk a little bit about problems and solutions with respect to physical abuse in your experience.

Pat McGinnis:

My name's Pat McGinnis. I'm the Executive Director of California Advocates for Nursing Home Reform, a statewide community-based organization. Our offices are in San Francisco, but we have a statewide toll-free number for consumers. I want to thank Assemblyman Simitian for hosting this hearing on such an important issue and for the opportunity to share our concerns. Since 1983, California Advocates for Nursing Home Reform, "CANHR," as it is known to many of our family

support group members in Santa Clara County, has worked to educate consumers about their right to nursing homes and residential care facilities and to identify those issues that are of greatest concern to consumers and to work for improved quality of care. Physical and fiduciary elder abuses are certainly priority issues for our office. In fact, I believe Prescott Cole from our office will be speaking at the Santa Cruz hearing on fiduciary abuse issues.

Over the last couple of years, in particular, we have provided training to the legal staff and the investigators at the Department of Insurance, at the Department of Corporations. We'll be going down to Los Angeles next week to do training again for the legal staff and investigators at the Department of Insurance about fiduciary elder abuse issues. Our very first bill that we sponsored in 1986 was a bill authorized by Senator Henry Mello that added the inappropriate misuse of physical and chemical restraints to the elder abuse laws in California. So we've been involved in this issue for many, many years.

There are obviously many forms of elder and dependent adult abuse. My focus today, at least for the next couple of minutes, will be on institutional abuse, i.e., particularly on nursing homes and residential care facilities because the incidents of abuse in residential care facilities for the elderly is also greatly on the rise.

California's elder abuse law is a very powerful tool. However, we know from experience that the passage of a law in and of itself will not have a deterrent effect on abuse. We know from the history of long-term care in California that enforcement is the key. If a law is not enforced, if it's not enforced quickly and swiftly, then it's not going to be effective. We've also learned the two greatest barriers to the identification and prevention of elder abuse in nursing homes is: 1) fear of retaliation; and 2) acceptance of substandard care as the norm. Fear of retaliation is probably the heaviest barrier to reporting of abuse. Residents who are able to communicate are very fearful of further abuse and punishment. And the resident's relatives and friends are also fearful of reprisals. After all, it's their mother or father there, or husband or wife, who is going to be staying in the facility long after we're gone. This fear of reporting abuse has been very frustrating to the long-term care ombudsman, to enforcement agencies and other patient advocates involved in this process, but certainly can be understood in light of the circumstances of the marketplace.

Nursing homes, unlike grocery stores and gas stations, are a providers' market. Few consumer options are available, particularly to those who are Medi-Cal eligible. Most often the choice of the consumer is dictated by whatever facility is available, whatever facility is willing to accept the resident, particularly if the resident is Medi-Cal eligible. It is the very rare case when a Medi-Cal patient is able to find a second nursing home, if he or she is dissatisfied with the care in the first facility, even if he or she is abused. So given that there are few protections against retaliation, few alternatives for placement, and very few remedies for residents in the first place, it's little wonder most residents are unwilling to air grievances and that a lower substandard level of care has really become the norm in California.

I've been involved in this business, and long-term care issues, for over thirty years in California. I worked as a nurse's aide, I've been a patient advocate, I've been the founder and director of California

Advocates for Nursing Home Reform, and never, ever, in the history of my own work have I seen so many horrible incidents of physical abuse in facilities in this state. There's no question that elder abuse in institutions is on the rise. Physical abuses such as assault/battery, and sexual assault are almost easy to identify compared with other types of abuses. Generally, it's not the overt violent acts that are the most common, but the neglect, the intimidation, the deprivation of care. Residents and their relatives, potential consumers and even enforcement agencies have started to accept things such as understaffing and the Medi-Cal reimbursement rate as excuses for providing poor quality of care, and indeed, as excuses for what amounts to elder abuse. I have been in numerous legislative hearings over the years, and listening to the nursing home industry get up there and tell our legislators, "Well if you just give us more money, we'll provide better care. If you could just get the staff, we'll provide better care." And I'm here to tell you it doesn't matter how much money you give them, there is no excuse for abusing elders in nursing homes.

The crucial question today that I ask is at what point do we stop viewing dangerous and unacceptable resident care practices as simply poor patient care or a violation of residents' rights, and start identifying these practices as elder abuse? I'll give you a couple of examples locally. A 92-year-old San José resident (this happened very recently) lost 10% of his body weight in less than a month. After being given a flu shot without any assessment for possible contraindications. That same day he was transferred to the acute care hospital where he was found unresponsive and with breathing difficulties. Now, he lost 10% of his body weight over a month, and nobody reported anything to his doctor. Another San José woman died shortly after being admitted to the hospital from a nursing home. Her death was attributed to sepsis, probably from a ruptured appendix, a condition that wasn't detected at the nursing home for over a week. Are these patient care problems as determined by the Department of Health Services, or are these neglect issues under the elder abuse laws in California? Another example, in a Morgan Hill facility, when a partially paralyzed resident refused to take a shower because bed baths were easier for her condition, staff members dragged her screaming down the hall naked to the shower. She suffered a bruise on her hand and a skin tear on her forearm.

In one San José facility, recently, a CNA was changing an elderly woman's diaper. When the woman complained about being treated roughly, the CNA threw the wet diaper in her face. And another San José facility, this happened a couple years ago but for some reason this sticks in my craw more than some of the other things in the river of abuse we see on a daily basis. An elderly gentleman was 87 years old, he had a mustache all his life. He was in the facility, and even though he had family who said leave it alone he just shaved, they decided they didn't like the mustache and they shaved it off. Is that abuse or is that just a violation of residents' rights?

These may be minor things on some level, and (on) other levels there's issues of death. When residents are tied into wheelchairs for 10-12 hours a day, and forced to be incontinent and non ambulatory, is this unreasonable physical constraint, as defined under the elder abuse laws, or is this an acceptable standard, of care because a lot of nursing homes do it? There are a number of nursing homes in California that provide adequate and above standard, and even excellent care. Not a whole lot, but there are some. It is to these facilities that we should look at the standard of care and really only when we let it be known that anything less is unacceptable, will we be able to stop the abuse and neglect in

these facilities. I have a number of recommendations and I'm not going to go over them all because I know you're limited on time and you need to get to that hearing in Sacramento.

State Assemblyman Joe Simitian, Chair:

Take all the time you need.

Pat McGinnis:

I did bring along for you a copy of our recently released report about debunking the myth of frequent and frivolous elder abuse laws in California. And a copy of some of the recent citations that have been issued against Santa Clara County facilities. These don't even include the deficiencies, these are just citations. I also submitted a copy of my written testimony with all of the recommendations but I just want to highlight a couple. Abuse doesn't happen in a vacuum. It happens in an atmosphere that tolerates neglect and abuse. Obviously what other people have talked about, training of policemen, and training of the district attorneys offices, obviously we need far more trained nurses in California. The attorney general has done an absolutely wonderful job in developing a video on mandatory reporting requirements in California and it's something that should be utilized in every nursing home in California. It's also done a great deal to protect CNAs. Administrators who refuse to report abuse should be sanctioned immediately and subject to compulsory training on elder abuse laws.

There are a number of issues regarding enforcement. I think we have one of the worst enforcement atmospheres that we've ever had in California under the Department of Health Services, particularly the licensing and certification. They need to train their staff on the difference between abuse and patient care issues. They need to immediately execute a memorandum of understanding and cooperation with the attorney general's office and the local district attorneys' office to share information, particularly citation reports of abuse, and to commit to protect residents and combat the abuse and neglect in facilities.

(There are) just a couple of issues on protection of residents. We really need stronger laws to protect residents and their family members from retaliation. Right now the laws that we have are really toothless tigers. Residents and their family members should not be coerced into signing away their constitutional rights as a condition of admission by being forced to sign mandatory arbitration agreements. Right now, AB1448 by Assemblywoman Liu is pending on the Assembly floor, and I think this bill absolutely needs to be supported and passed into law. The nursing homes and other institutions are using these as an excuse to deny frail, very ill people their constitutional rights. We need to amend the Health and Safety Code 1430 to put some teeth into enforcement of the residents' rights provision. We also need to amend the elder abuse laws not to do what the nursing home industry is proposing to weaken it, but we really need to strengthen it and lower the burden of proof, so more people will be able to obtain some remedies under the law. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. The, I know you have prepared written comments, thank you, but as we were beginning you mentioned that rather than the more visible abuse, we were more inclined to see three things, one was neglect and one was intimidation and I'm afraid I did not catch the third.

Pat McGinnis:

Deprivation. Deprivation of hydration and nutrition, particularly because so many people to end up with sepsis. You see every day, you know, people having their limbs amputated and the horrible things that happen. These things don't happen when you have the care in the facilities.

State Assemblyman Joe Simitian, Chair:

Let me ask now that we hear from Michele Schroeder.

Michele D. Schroeder:

Good afternoon, and thank you for giving me the opportunity to be here. My name is Michele Schroeder. I'm the supervising attorney for Senior Adult Legal Assistance, also known as SALA, which is a nonprofit legal services agency that provides free legal assistance to Santa Clara County residents aged 60 and over. We provide assistance in the area of elder abuse, public benefits, incapacity planning and other legal issues. We target elders who are low income, who are at risk of abuse or exploitation. Elder abuse is an area that we focus on and, unfortunately, represents more than one-third of our open caseload. We use the elder abuse, domestic violence and civil harassment laws to obtain civil restraining orders to protect seniors from their abusers. These restraining orders are separate from any criminal prosecution of elder abuse, which is handled by the district attorney.

Now, Pat talked about institutional physical abuse of elders, and I'm going to talk about a different side of elder abuse. The typical case that we see involves a senior living independently in his or her own home, who is being abused by an adult child or grandchild living in the home with the senior. More often than not, the person abusing the elder is addicted to drugs or alcohol, or in some cases is mentally ill. A common thread in many of these cases is the high priced housing market in the Silicon Valley, that has forced families, including those who are dysfunctional, into shared living arrangements. We also see cases involving elders on limited fixed incomes who rent rooms to tenants who become abusers. And cases involving elders who are victims of spousal abuse. Although these two scenarios are not as common as abuse by an adult child or grandchild.

The physical abuses that we see include hitting, kicking, shoving and knocking the elder down. In some cases, the abuser has not yet physically harmed the elder, but has threatened to do so. Threats such as "I'll kill you," or "I'll burn the house down," are very common. In almost all cases, the physical abuse threats are accompanied by verbal and emotional abuse designed to intimidate the elder. We receive many referrals directly from the Superior Court. The court operates a clinic in which people who need restraining orders obtain assistance in filling out the paperwork. Because our target clients often have

problems representing themselves, the court clinic refers them to SALA. We also receive many referrals from APS. And, in turn, often refer clients to APS. APS generally refers legally competent elders who need restraining orders to SALA.

During the last three years, SALA has received funding through the San José Health Neighborhood Venture Fund for our hotline, which clients can call if they are victims of elder abuse. The hotline allows us to respond to urgent cases, primarily elder abuse cases, in an expedited manner. In cases where there's been an assault or threat to assault, we can obtain a restraining order under the Elder Abuse Protective Act or the Domestic Violence Act to remove the abuser from the home. Elders who obtain restraining orders against their children or grandchildren usually feel compelled to take this action as a last resort. They often have put up with abusive behavior for many years hoping things would change. Although they are afraid of their abusive children, they are still protective of them, and are often reluctant to report the abuse to police because they do not want the abuser to be criminally prosecuted. For some elders, the emotional burden of distancing themselves from their abusive children is so great they lose their resolve to pursue a restraining order, even after initiating it. It is not uncommon for our clients to withdraw their restraining order petitions only to contact us again a few months later because they are still being abused.

Now in terms of solutions, other panelists, particularly on the financial abuse panel, mentioned education and outreach efforts, particularly by Adult Protective Services. We're very fortunate in this county that APS has been able to make such efforts, and much progress has been made in increasing public awareness, which we believe has resulted in more elders contacting SALA for assistance. We recommend that funding be maintained so that APS can continue its efforts in education and outreach. In addition, more resources to support the physical and emotional needs of our clients who suffer from elder abuse would be particularly beneficial. Next Door Solutions, a domestic violence nonprofit agency in San José, recently established a program specifically for older women, who are being abused. They offer emotional support and physical shelter to older women who are being abused by partners and family members. More of these kinds of programs should be established and expanded to cover elderly men who are being abused, as well. Support groups made up of other elders who have experienced abuse from family members would provide needed emotional support for our clients who find it so difficult to separate themselves from abusive children. (There is a need for) more resources for family counseling for dysfunctional families where elder abuse is an issue. Mental health counseling for abusers who are mentally ill might also be very helpful.

I'd like to mention just one other issue before I close. Although we focus on the issue of physical abuse, we have noticed that some of the calls to our hotline involve situations where the elder is not being physically abused. At least, not yet. Unlike the scenarios I have already described, these cases usually involve an out-of-control, younger family member who is living with the elder and significantly disrupting the elder's life. Frequently, there is verbal abuse and intimidation, causing stress that can affect the elder's emotional and physical health. Under the elder abuse and domestic violence laws, there has to be an assault or threat to assault before a temporary restraining order or kick out order can be issued. Furthermore, many of these elders do not want restraining orders. They just want to get the disruptive family members out of their homes.

Generally, we advise clients in these situations to use the eviction laws to evict the out of control family member. However, using the eviction laws it can take up to 60 days to evict, or even longer if the elder has to go through an unlawful detainer trial. This is a long time for an elder to have to live with someone who is verbally abusive and disruptive. Furthermore, once an eviction notice is served, there is the potential for the disruptive individual to become physically abusive in retaliation against the elder. We at SALA believe that making it easier for elders to evict or remove the disruptive family members might address some of these problems, even possibly prevent elder abuse. We currently advise many clients to use the civil code section that applies to evicting a single lodger from an owner occupied dwelling. This is often not an ideal solution, and we hope that other legal remedies might develop to deal with this situation. I don't have anything specific in mind, and we don't have time to talk about the statutes, but I could provide further suggestions upon request. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you. And we will follow up with you on that specific issue. Thank you. That brings us back to Jamie Buckmaster.

Jamie Buckmaster:

Hi. My name is Jamie Buckmaster. I'm the manager of Adult Protective Services in Santa Clara County. It's part of the Department of Aging and Adult Services, which is part of the Social Services Agency. Physical abuse is one of the nine types of abuse that is reported to Adult Protective Services. One of our earlier speakers, Lisa Mancini, mentioned that generally we don't get one type of abuse when it's reported to us. Today, of course, we're going to concentrate on physical abuse.

State Assemblyman Joe Simitian, Chair:

Ms. Buckmaster, I apologize for interrupting and I also don't want to give you a pop quiz to put you on the spot, but we've talked about financial abuse, we've talked about physical abuse. You mentioned nine types of abuse. Can we hear the other seven so we know what the range is, and if someone needs to help you out with the ninth one, which always happens to me, apparently you think you can recall them all for us.

Jamie Buckmaster:

I can take a good shot at it. Physical, neglect, self neglect, sexual, abduction, isolation, mental suffering, financial, how many was that, 8, 9, sexual.

State Assemblyman Joe Simitian, Chair:

You got it. We'll come back, but it would be helpful to have the full range of abuse.

Jamie Buckmaster:

Abandonment.

State Assemblyman Joe Simitian, Chair:

Thank you. Good, thank you.

Jamie Buckmaster:

It's on the reference card in the back of the room.

State Assemblyman Joe Simitian, Chair:

Thank you very much.

Jamie Buckmaster:

Usually I know that, I'm just a little nervous. The typical victim that we see in Adult Protective Services is an elder female. About 66% of physical abuse perpetrated by others is perpetrated towards an elderly female, generally in her eighties. One of the things I should mention before I start talking about what we see is what our purview is. Pat McGinnis mentioned the long-term care ombudsman program in terms of looking at those kinds of abuses that might occur in a skilled nursing facility. Adult Protective Services generally covers the entire community with the exception of the skilled nursing facilities and licensed board and care. We also investigate allegations of abuse that might be perpetrated in acute care facilities, some of the hospitals. Our goal is to investigate the types of abuse that I've talked about, for both elders 65 and older and for dependent adults who are 18 to 64, who for physical, mental or emotional reasons can't advocate for themselves or carry out normal activities.

As I said earlier, the typical victim of financial abuse perpetrated by others is female, probably in her eighties. Michele mentioned many of the types of things we see in Adult Protective Services that we refer to SALA to help obtain restraining orders. But let me go over some of them. Kicking, punching, slapping, pinching, kicking, choking. We've seen cases where elders were restrained to a large piece of furniture, like a dining room table, by a rope and they couldn't wander. In one case, prior to the physical abuse, one of my social workers went out to a case and saw a perfect 6-foot by 6-foot by 3-foot grave dug in the backyard. The drug-addicted grandson was going to throw the elder into the grave, bury him so he didn't have to worry about funeral costs.

The solution that I'd like to talk about has to do with statistics reported to the Department of Justice. We're really lucky in this county, in terms of prosecution. Earlier we had Cindy Hendrickson speak and she does a lot of prosecution in this county. But one of the things that is not their fault, but it's the way data is collected about elder abuse, is the number of reports that actually get to the Department of Justice. What Adult Protective Services would like to propose to you is the creation of an umbrella

code for reporting the incidents of elder and dependent adult abuse to the Department of Justice. This would be similar to the Penal Code 13730 which requires the reporting of domestic violence related calls to the Department of Justice. Data that's collected on elder abuse in the State of California is sadly underreported. We know how many reports we take every single month in this county and across the state, and that translates into almost no cases when it finally gets to the Department of Justice. This would ensure that we could get an actual look at the amount of elder abuse that's out there.

We know that only 1 in 14 incidents of elder abuse actually gets reported. And so what we're looking for is some legislation that would create this umbrella code, so we could actually get a really good grip on what kind of elder abuse is out there. We know it's out there, we know it's the tip of the iceberg, and we're concerned for all those folks out there who are getting physically abused, neglected and so on and so forth. I do have some, a little bit of proposed language that one of my peers developed. And I'd love to be able to give it to you. Not only would it be important to collect the data, but we could take a look at what kind of response we want to make to the most important investigation of abuse, against the frail and vulnerable. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. We will work with you and look at the language as well as the concept.

Jamie Buckmaster:

Thank you very much.

State Assemblyman Joe Simitian, Chair:

That brings us then to Daniel Nishigaya. Please introduce yourself. Thank you for being here.

Daniel T. Nishigaya:

Yes, thank you, and it is a pleasure to be here. I am Dan Nishigaya. I'm the deputy district attorney here in Santa Clara County. I currently work in our physical abuse of children and elders unit, and I have been doing that for about three years. Here in Santa Clara County we have two deputy district attorneys dedicated to the review and prosecution of cases of physical abuse, neglect and endangerment of children, elders and dependent adults. Rightly or wrongly, these same lawyers do not handle the elder financial cases. That's Cindy Hendrickson's unit and she's already spoken. We do not handle cases of sexual assault. What I want to talk about today is the prosecution and punishment of those perpetrators who commit the most serious crime of physical violence on some of our most vulnerable members of the community, those being elder and dependent adults, although that's not our focus today. What I'm going to do is say something that's probably stereotypical for a prosecutor, which is to argue that these most serious perpetrators of the most serious crimes should be receiving a more serious time in custody.

I understand saying that arguing for increased penalties for criminal conduct is certainly not a solution in all circumstances for a broad-based problem. But when the problem is offenders not receiving appropriate accountability for their crimes, that, of course, is the most direct solution. In addition, I do believe that the way the most serious elder abuse cases are handled sends a message and has a trickle down effect with respect to the less serious cases. And if we do not show that we are handling our most serious cases in the most serious way, that has an effect on how our elder abuse prosecutions are being handled generally.

As with child abuse, where for years we've had a problem as prosecutors in dealing with the concept of children as chattel, as property of their parents, and somehow lesser human beings, when it comes to the physical injuries that are inflicted upon them. There still is, in my opinion, at least in this county, a perception with respect to physical elder abuse, that our victims are somehow second class human beings, because of the fact they're already frail, or perhaps they don't have that much longer to be with us, anyway.

We recently had a case that involved a purse snatching robbery of an elderly woman. In the course of the purse snatching, she was thrown to the ground, she broke her hip and had other injuries. She subsequently died, and I'll talk about that in a minute. When this case was brought to court for a pretrial discussion, the public defender on this case said something to the effect (of), "Well this wasn't really great bodily injury under the law, was it, because you know, she was already pretty frail and it probably didn't take very much to hurt her." This is the attitude and perception that we still, on occasion, have to deal with in the criminal court. And what I want to talk about today is the punishment under the California statutes with respect to those who inflict what the law calls great bodily injury upon elders and dependent adults.

Currently, we have some code sections that have been useful in increasing the amount of prison time when a person commits an act of violence against an elder and is sent to prison. That person can receive an additional prison sentence. Currently, if you commit, if you inflict great bodily injury on an elder 70 years or older, you can receive 5 years enhancement to your prison sentence for that. Although our elder abuse statutes cover individuals 65 or older, we do not have any special great bodily injury provisions between 65 and 70. In the child abuse situation, and in a situation of domestic violence, in which great bodily injury is inflicted, what the Legislature has given us is increased penalties for that infliction of great bodily injury and a range of punishment that a sentencing court may look at. And what I would propose is we have something similar in the case of elder physical abuse. Particularly in those situations in which great bodily injury is inflicted on an elder, and there are aggravating circumstances with respect to that great bodily injury. I believe the courts should have a range and some increased options with respect to great bodily injury.

With respect to the elderly woman who was a victim of the purse snatching robbery, she died approximately two months after the robbery. It is unclear at this time whether we will be able to prove legally a connection between the robbery and her death. However, what is very apparent is that she had to spend the remaining days of her life in a care facility, that she would not otherwise had to have

been in, had she not been the victim of this violent crime. This, in my opinion, was a case of great bodily injury that had aggravating circumstances. Unlike some of our other community members, the infliction of great bodily injury on an elderly person, although perhaps not technically different than such an infliction on another individual, sometimes causes permanent effects and the person will never recover from that.

We have also recently had a case in which an elder was attacked on a county bus, suffered significant injuries including a skull fracture and brain injury. That gentleman was never the same. Our options with respect to prosecuting the perpetrator and receiving additional punishment for the infliction of great bodily injury were limited. As has been discussed in case law in other forums throughout the years, sometimes it's very difficult to prove murder charges in these kinds of cases. And I'm working for additional options.

What I would propose is that there be an amendment to Penal Code Section 12022.7(c), which covers the infliction of great bodily injury on people 70 years of age or older. That would include a provision for inflicting great bodily injury upon a person 65 to 70 years of age. That would allow the courts to impose a punishment range of either 3, 4, or 5 years additional time in state prison. And then with respect to individuals 70 years or older, I would propose that the court have a range of additional punishment up to 5, 6, or 7 years. I think the way we handle these more serious cases, giving prosecutors the options to hold perpetrators appropriately accountable for inflicting these types of injuries on our most vulnerable members of the community, not only achieves just results, but also sends a message with respect to all of our physical elder abuse prosecutions.

The other thing I wanted to mention today with respect to prosecution of physical elder abuse, although we've heard that many times elder abuse, both physical and financial, is perpetrated by somebody who knows the victim, either a family member or caregiver, that is not always the case. California law requires in our physical elder abuse prosecutions, that we prove that the perpetrator knew that the victim was an elder or dependent adult. I disagree that should be a requirement under the law, for a variety of reasons that I don't necessarily need to elaborate upon here. We are not the only state that requires the actual knowledge, but not every state does. I have learned that at least four states—Florida, North Dakota, Utah and Wisconsin—do not require actual knowledge that the victim of an assault be an elder or dependent adult. I find a discrepancy in our own laws with respect to this issue under Penal Code Section 368 (d), financial abuse by a non-caretaker. The law simply requires that the perpetrators know, or reasonably should have known, the status of the victims. With respect to Penal Code Section 368(f), which prescribes additional punishment for false imprisonment of an elder, there is no knowledge requirement at all. With respect to Penal Code Section 667.9, which provides for an additional year in prison for certain violent crimes committed against elders, the disability or condition of the victim must be known or reasonably should have been known by the perpetrator. And I believe this discrepancy should be corrected. Either eliminating the knowledge requirement entirely, which I would support, or making it consistent with other California laws that require actual knowledge or that a reasonable person should have known of the status. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much. You, I thought were very helpful in terms of the three different standards that might apply in terms of new, reasonably, should have known, or no knowledge going back to the issue of great bodily injury, an additional measure of discretion. If you could give me some sense of the relative importance of that set of issues, as contrasted with the obligation to prove someone knew that they were dealing with an elder or independent adult. Could you give me some sort of rough sense of priority there and relative importance? Not to dismiss one to the exclusion of the other.

Daniel T. Nishigaya:

Yes, I would respond that my first comments with respect to great bodily injury would, in my mind, be more important. Although there are cases that cause us problems in terms of having to prove beyond a reasonable doubt the perpetrator knew the victim was an elder, we usually can overcome that. And that's a limited number of our cases. I think, as I mentioned, with respect to the overall impact on elder abuse prosecutions across the board, the first comment would be more important.

State Assemblyman Joe Simitian, Chair:

Thank you. I suspect you know, but others may not, on the issue of greater penalties, this is a challenge given the current climate in Sacramento. I worked last year, as I referenced earlier in passing, with District Attorney George Kennedy and Rolanda Pierre-Dixon from the DA's office, on additional incremental sentencing for simple battery against an elder or dependent adult. And was struck, as I worked my way through the process, just what the resistance was even to that somewhat narrower increment. I know you're aware, as you make the suggestion, it would be difficult. (That) doesn't mean it's not worth pursuing. So, thank you, on both measures. That brings us to Dr. Diana Koin. Dr. Koin, welcome and thank you.

Diana Koin:

Thank you very much for having me here today, and I want to thank you for all the work you've been doing on behalf of elder abuse and neglect. I am a practicing geriatrician at a retirement community on the Peninsula. With my other hat on, I'm the Director of Adult Abuse Education for the California Medical Training Center Project based in Sacramento at UC Davis, where our charge is to educate healthcare professionals and law enforcement throughout the state about elder abuse, as well as other forms of interpersonal violence, sexual assault, child abuse and domestic violence.

I would like to start by underscoring how serious the problem of physical abuse is. Some excellent research has been done by Dr. Mark Lachs at Yale. He found that elder abuse victims have a three times greater mortality rate than the control group, that had an equal number of co-morbid conditions, the same age, the same frailty, and whose death was not due to elder abuse. In addition to the actual trauma that the victims incur, there's another mysterious black cloud that goes with this problem. And it has really lethal consequences. We've heard many wonderful suggestions today, so I'll limit my comments to just a couple of nuts and bolts kinds of things, that I've become aware of. I have the

privilege of having a wonderful advisory board that keeps our curricula on track. In addition, part of my job has been to be out and about throughout the State of California, big and small towns, giving grand rounds to physicians. So I'd like to be sure to include their perspective for you, as well.

I think we have two major areas of problems, one of which has already been covered, and I'll just add a little bit to that, and one is—that's the data collection. I'd like to really focus on some of the practical problems we have about reporting. One of the issues that continue to come up is, "Where do I call?" When I speak to physicians and I explain that, well if you live in a community you call APS, and if you live in a facility you call the Ombudsman. I really get an instant glazed reaction. We're really making it tough for people to get it straight about who to call. In addition to initial vectors they have to decide, they have to also think, of course, whether the police should be called? Whether maybe the DA should be called? And in many instances, in institutional care the Department of Health Services, Department of Social Services, Department of Mental Health, and the Department of Development Services? So it gets to be a real project to report this really important crime.

Secondly, with regard to reporting, there are increasing numbers of questions about which reporting forms to use. Traditionally, SOC341 has been the reporting form we've used, which is almost impossible to find on the Internet, unless you have a bookmark and can go back to it. But I've been part of the project to develop a forensic reporting form. But it's really intended to help prosecution to make sure they have all the information to move forward with successful investigation and then prosecution. We also now have the SIR report, Suspicious Injury Reporting form. And unfortunately, in cases where people are victims of domestic violence, sexual assault, they might add these forms to the mix as well. Again, we're starting to end up with a little too big a shopping list to make this a very easy proposition.

The third reporting area I wanted to mention today that's problematic is that of our physician colleagues. My physician colleagues who are a little slow on the uptake. We know that in California we're doing a little bit better than Michigan. We're on 2% of the APS reports are filed by physicians. California is approximately 8%. But this is clearly way below the kinds of cases to which physicians are exposed and they are not coming forward about that. And last but not least, particularly since this Committee is about privacy, I think we need to also factor in what impact HIPAA has had on elder abuse cases and investigations.

State Assemblyman Joe Simitian, Chair:

And for members of the public who may not be aware of what HIPAA stands for.

Diana Koin:

Health Information Portability and Accountability [Act].

State Assemblyman Joe Simitian, Chair:

HIPAA. Thank you.

Diana Koin:

It was a well-intended piece to maintain privacy in the world of insurance. But what has happened, in fact, is as we move forward to work with elder abuse cases, the data is locked away from us. There is a solution, however, and I'll come to that in a few minutes. But I think one of the things that we do is kind of puzzling for health professionals, for hospitals, and local records departments in hospitals, is what to do about these legal issues, and they find it very confusing.

So let me switch gears and talk about some potential solutions for you. With regard to this chaos about who to call and what forms to use, I think we really are a little overdue in having, if you will, an elder abuse summit to create very clear, very simple guidelines about what you do, when you do it, and all those kinds of things. We need to be very straightforward, and to make the reporting as manageable as possible. Definitely, with regard to the issue that physicians are not particularly involved, I think that, needless to say, we need to continue with education to help the professionals, because a lot of the difficulty in fact, is somewhat generational. Older physicians who have not had training in interpersonal violence, really need to have exposure to this. Younger physicians are getting this training either as part of medical school, or their post graduate training and residency. But the practicing physicians out there really need the assistance on that front. In regard to the increasingly critical problem of good physician care in nursing homes, I would like to suggest the Legislature think about creation of a special status for nursing home physicians. So we'd actually have a physician corps, much like (the) Peace Corps and so forth, that was really devoted to long-term care. Those physicians would be required to be experts at not only basic geriatric medicine but elder abuse and neglect.

Now I'd like to just quickly add a little bit to what Jamie said about data. Not only is there an urgent need to document the work that we're doing because, indeed, when you look at the [Dept. of] Justice statistics about what we're about, it looks as though we're all (be) sitting around reading the paper. I mean, it really is shocking that we know what's out there and we know what those data are, and there's just planets difference between them. In addition to having good data, it would help enormously with our problem with the medical community. Physicians are absolutely insistent today, justifiably, on having outcome data. We really need to have information that is reliable to make this all work.

Last, but not least, I'd like to point out that on the horizon we'll probably have passage of the Elder Justice Act, somewhere in the next couple of years. One of the provisions of that will be to create "Standards of Excellence." And I would really hope that new leadership will make sure California physicians have at least one of those standards of excellence. Thank you, again, for inviting me to be here today.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. Let me go back to the issue you mentioned about an elder abuse summit. And let me ask you and perhaps other panelists to comment as well. And as I

understood your suggestion, it was that there might be value in having an elder abuse summit primarily focused on the issue of reporting, to whom, by whom and how. Did I understand you correctly?

Diana Koin:

Yes, but I think that might also be a reasonable forum for deciding what data should be collected and which agency, whether the Department of Justice, or whatever, where that data should flow.

State Assemblyman Joe Simitian, Chair:

And do you have any thoughts, if that would be something that would best happen at the local level, the regional level or the state level? I inferred statewide stakeholders, did I infer correctly?

Diana Koin:

You did.

State Assemblyman Joe Simitian, Chair:

Okay. And who is it you think ought to participate in such summit? Who do you think might most effectively convene such a summit? And if you haven't thought all these issues through, that's fine, but I want to make sure I take away as much as I can today.

Diana Koin:

Right. In terms of who should attend, those of us who work in this field are a relatively small crew. So I think that people who have established leadership in the field would certainly be participants at that kind of big round table. There was a precedent to this done years ago. There was a prior summit and I understand it was quite successful. And that would be my suggestion, we should attend on a statewide level.

State Assemblyman Joe Simitian, Chair:

Thank you. Other comments from committee members, or panel members, before we go to the public? Yes, Ms. McGinnis.

Pat McGinnis:

Just one comment, Dr. Koin and I were at a meeting recently at the attorney general's office, when they were talking about the results of their media campaign to call in their statewide number. It was interesting and it reinforced what everybody was saying. Okay, they were very happy about the number of calls they got. However, when you call in you're referred to Adult Protective Services or the Ombudsman, I believe. My questions were: "What happens next? What's the follow up? What's the

outcome?” That is where it kind-of stopped. I think it’s really important that we find out if any of this is effective.

We do need some kind of coordinated data system in California for reporting abuse, there’s no question about it. I believe the attorney general’s office would be very supportive of that, as well.

State Assemblyman Joe Simitian, Chair:

I understand your comments would also tag onto what Ms. Buckmaster said about umbrella code issues?

Pat McGinnis:

Yes.

Public Comment

State Assemblyman Joe Simitian, Chair:

Good thanks. Other comments? Then let me say thank you very much to the panel and let me ask the public to join me in thanking you in an audible way. Thank you. Thank you all. We have had two exceptionally good panels, I believe, today. I want to thank you all who have participated. We now have time set for public comment. Before we do that, just a couple of announcements. If you want to make a comment, if you would please raise your hand and one of our staff members will come and give you a card, so we can take you in order. If you have already filled out such a card, then you could raise your hand holding the card and we’ll know that as well. I see somebody over in this area holding his card up. We will call you up in order.

The schedule calls for us to take a break but I am inclined to simply forge ahead. I see nodding heads. Would that make sense to people to do without a break? All right, then let’s forge ahead and take public comment as well. The first card we have is from Katie Zoglin with the County Counsel’s Office, to be followed by Carmencita Reyes. Would you please come up to the main microphone here. And if you give us your name for the record, we will then take your comments. If I could ask folks to line up so the next speaker is all ready to go, that would be helpful. The microphone is movable, so if you wish to adjust it or pull it to you, that would be fine. Thank you. Ms. Zoglin.

Katie Zoglin:

Thank you, and thank you for holding this. My name is Katie Zoglin. I’m the Deputy County Counsel for Santa Clara County. I represent the Public Guardian’s Office here. And I wanted to add to some of the comments related to financial abuse that Cindy Hendrickson made. Law enforcement and the criminal justice side is obviously a key element. I want to emphasize how important civil tools are also. We’ve been very successful in working with the district attorney’s office, and together I think we can

reach a result that neither one of us could get individually. For example, when we represent people who have been conserved by the Public Guardian's Office, we frequently find elders whose homes are in foreclosure as a result of predatory lending or fraud. We have been very successful in keeping seniors in their homes. That's something the criminal justice system is not equipped to do. But through the civil procedures we are able to do that. I was able to stop a senior's home from being closed on who was a victim of a fraud. For many seniors, that's the most important thing, to be able to stay in their homes where they've often lived for decades and decades. In terms of legislation, we find here in Silicon Valley that predatory lending, unfortunately, is a widespread practice. The Legislature began addressing that issue by adding Financial Code Section 4970. Unfortunately, it's a very weak law. While it's a good start, it really needs to be seriously strengthened. It only covers loans that are less than \$250,000. As you know, homes here are usually worth much more than that, so it doesn't cover any of the cases that we've had.

State Assemblyman Joe Simitian, Chair:

Ms. Zoglin, let me just refresh my memory. Is this former Assemblywoman Migden's legislation? Is this the bill that we are talking about, do you recall?

Katie Zoglin:

I don't know. It was enacted in 2002.

State Assemblyman Joe Simitian, Chair:

I think that's the bill, but we'll follow up with you to make sure that we're cited to the right source. Thank you.

Katie Zoglin:

I'm happy to provide you with whatever you need. As a result, because there really is no statewide protection, a lot of localities have started looking at ordinances regarding predatory lending. The City of Oakland recently enacted one. The banking industry did challenge it, although, it was upheld. We'll hear within a week or so whether or not the Supreme Court is going to take the case. The City of Los Angeles has also started enacting or working on a predatory lender ordinance. I think a better approach would be at the state level. We would enhance the existing legislation to cover more cases of predatory lending, rather than every city and county having to enact its own legislation. I think the bank industry would prefer to deal with one standard, as opposed to having to deal differently with every locality. I would be happy to give you examples (inaudible) to use as a model. And then other areas-to comment on previous issues. Truly intervention and training are important in the communities, in addition to the elders, and the public. The title companies industry, escrow offices and lenders, also need to be included. You might consider including them as mandatory reporters. We get so many cases in which a senior who's been conserved, who is incapable of making decisions about their financial affairs, signs a

paper and has no idea what they just signed, much less the implications of the paper. I support the request to consider making banks mandatory reporters. I have also seen cases where an abuser brings an elder in, and the loan officer wanted to report it, but the supervisor told them not to because they were concerned about liability. I think that's a false concern, because there are many protections, but the banking industry sees it otherwise. And there are a few other areas, but I can provide those to you in writing, to save time and give others an opportunity to speak.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments and suggestions. I understand Carmencita Reyes has decided to pass. Thank you very much. Our next speaker will be Bob Jaffee followed by Richard Park. Am I misreading the name? My apologies.

Bob Jaffe:

Assemblymember Simitian, my name is Bob Jaffee. I am a member of the California Senior Legislature, and I want to thank you for the opportunity to be able to speak about elder abuse. There are counties in California that are insidiously contributing to elder abuse by denying the elderly who do not qualify for the American with Disabilities Act, to obtain paratransit transportation. In some counties, paratransit would not transport the elderly unless they had a doctor's prescription detailing their impairment. Many elderly will be denied driving privileges due to more strict requirements by the DMV. Many elderly voluntarily give up their driving privileges because they feel uncomfortable driving at night or driving in traffic. The elderly living alone or in senior housing feel isolated because they do not live within walking distance of public transportation. A budget deficit has always been used as an excuse to deny the elderly their needs.

Elderly priorities are usually first to be cut and usually at the bottom of the priority list. The California Older Americans Act includes transportation for elderly, whether they are impaired or not. To isolate them and deprive them of paratransit transportation is an abuse, as well as physical, moral and financial abuse. There are many cities in California that do provide paratransit. I think San Mateo County is one of them. Los Angeles County is another. There are many ways to provide it, there are many states in the country that already provide it. I think that a state mandate that would dedicate funds to counties who need to provide paratransit, would help avoid this abuse. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. Our next speaker is Richard Park, followed by Emmie Malazgirt. Welcome Mr. Park.

Richard Park:

Thank you for having this meeting today. My name is Richard Park. I'm an administrator at Skyline Healthcare Centers in San José. I just wanted to say, while I do appreciate some of the comments by

Ms. McGinnis today, I do believe some of them are opinions. I believe there is a small number of nursing homes that provide excellent care in this state, and that can be readily seen. There are some very proud healthcare providers in this state, who are very caring and loving people, who would take exception to that comment. The other thing is that as far as mandated reporting, that is something that is regulated in the nursing facilities. Ms. McGinnis mentioned that it would be good, if the nursing facilities used the video, supplied by the Department of Justice, that is mandated. Every staff member must see the video and sign his or her name as to having seen the abuse training. That is something we do through an annual survey every year. And the Department of Health Services is vigilant in making sure that it is taking place. And we do that annually and for new-hires as well. We take that very seriously, as we do in providing seniors and their families with the very best care that we can give them. We also give them the opportunity to report abuse, if they see it. And our staff reports abuse as well, without fear of retaliation.

I think that fear of retaliation has been much alleviated by the 800-number that's been provided and by the various forms of mandated reporting. It really takes away the individual option. It is mandated that our staff does report abuse. And families or anybody who sees abuse must report it as well.

One thing I'd also wanted to mention was that the Department of Justice did have a media awareness campaign. They reported on it on November 18th. They stated that they received a total of 2,483 calls to their hotline number. However, I should mention that only about 50 of those calls were referred to the Long Term Care Ombudsman. All of the others were reported to Adult Protective Services. I think, we need to put our focus where it is needed—which is often in the home and community base. We are very highly regulated in the nursing home industry. It is probably one of the most highly regulated industries in the country. So to have more regulation, I think, it would be somewhat overkill. There's an opportunity in the community to be focused on. And I would just implore you to take a look at that. So that's what I have to say. Do you have any questions?

State Assemblyman Joe Simitian, Chair:

No, but thank you for your comments. That brings us to Emmie Malazgirt. I hope I'm in the ball park with the pronunciation. She is to be followed by Denis O'Neal.

Emmie Malazgirt:

Thank you very much. Yes, it's Emmie Malazgirt. What wonderful pronunciation. Thanks for the opportunity of being here. I am the owner of Nursing Resources. It's a licensed home health agency that provides home health services to elderly people in their homes, as well as in residential care facilities. Now the issue that I wanted to bring to your attention is the difficulty of fingerprinting. Department of Social Services and Department of Health Services are two separate entities. As a home health agency, licensed by the Department of Health Services, we fingerprint our certified nurse assistants, home health aides, and personal care attendants. When we send our employees to residential care facilities to care for our clients at these facilities, which are licensed by the Department of Social Services, they do not recognize the fingerprint clearance of the people from the Department of

Health Services. That means that they need to go through this process all over again. I might add that this is a highly expensive procedure—we're talking about \$100 per processing. So it puts a lot of pressure, financial burden on companies—small companies like us, to do this over and over for each kind of audience. That's what I wanted to bring to your attention. If there is some way of standardizing the fingerprinting process, so that once a person is cleared by one entity, it's available and valid for everybody else.

State Assemblyman Joe Simitian, Chair:

Thank you very much. Our next speaker is Denis O'Neal and I believe that's the last card I have.

Dennis O'Neal:

Thank you, Assemblyman and committee, for being here today and conducting this hearing. I am also a Deputy County Counsel member of the Santa Clara County FAST team. I also advise the Public Guardian on civil aspects of elder abuse. I wish to also thank all of the previous speakers, with whom I concur.

Early intervention is the key to saving the homes of elders and in many cases saving lives. Early intervention has already begun with our FAST team, through mandatory reporting. Having the institutions that are most likely to see financial abuse, report it, would further this. Those in position to see it, would be in the best position to prevent it—title companies, realtors and banks. Right now, we require physicians to report financial abuse, but we do not require banks, realtors or title companies to do so. That doesn't make sense.

In terms of law enforcement, actually, my observations have been that law enforcement, particularly in Santa Clara County, has done a tremendous job, an excellent job. And it is the efforts by our FAST Team, the District Attorney, Mr. Kennedy, that has done that.

Unfortunately, law enforcement cannot always obtain restitution in these cases. Oftentimes, the criminal conduct, someone who steals the assets, consumes the assets with drugs or alcohol, what have you, and the assets are gone. The civil prosecution is left with trying to save the house of the elder. In those cases, we're usually not going after the direct perpetrator or the elder abuse. The Elder Abuse Act, as you know, provides that elder financial abusers are anyone who takes, or assists in taking from an elder. On the civil side, we're usually going after someone who has obtained or assisted the financial elder abuse. When you go after these individuals, the same problems exist today that have in the past, we're often going after a title company, or we're going after a realtor, or somebody who has assisted in the abuse. The only way to protect the house for the elder is to prosecute these people civilly.

The problem of proof, essentially the Elder Abuse Act of 15630.10—I may be wrong, I'm not good on numbers—requires that to get attorney fees or enhanced damages, you must prove by clear and convincing evidence that the person who obtained the assets, or assisted in obtaining them, acted in bad faith. And you must prove by clear and convincing evidence that they acted recklessly, with fraud or

malice. Often that burden of proof is much too high, particularly when it applies to someone who had assisted or retained after the fact. If that burden could be lowered to a normal burden of preponderance of evidence, the additional benefit would be, not only could be, prosecute civilly to assist the elder, but private attorneys would step up to the plate and handle some of these cases.

It was anticipated, when the Elder Abuse Act passed, that private civil attorneys would also step up and take on some of these cases. In fact, my experiences in the county are that very few private attorneys take these cases. They can't make money on them. We've attempted to get them to take them, but for the most part, deputy county counsels throughout the state are handling these cases. Ironically, there is more of a financial incentive for private attorneys to specialize in representing the abusers, and not representing the victims.

Another comment, Probate Code I think it's 359 [259], provides that a person who is convicted of elder abuse, either civil or criminally, cannot inherit. Unfortunately, the way that statute is written, it seems to read that they cannot inherit the asset that was returned because of successful prosecution. The statute could be, and should be, changed to state that anyone convicted of elder abuse can't inherit period. This gets into arguments about what is the asset that was secured.

State Assemblyman Joe Simitian, Chair:

Excuse me. Inherit. Even if there's a written will that designates them as the beneficiary?

Dennis O'Neal:

Correct. The current statute, Probate Code 359 [259], provides that even if there is a will or a trust, a person convicted of elder abuse cannot inherit the asset that was obtained back into the estate because of the elder abuse prosecution. To disinherit entirely would be appropriate in most circumstances.

My last comment goes to privacy and confidentiality. The current problems of privacy and confidentiality will be compounded by HIPAA. Medical declarations are required. Medical testimony is required. In many of these cases, as has been reported by the panelists, elders do not come forward and report that something happened to them. We need to prove the elder is incompetent to go forward on a conservatorship. In order to get assets back, we're usually trying to provide that at the time of the transfer, the power of attorney, the joint tenancy, what have you, that the elder either lacked capacity or was susceptible to undue influence. Once again that requires medical declarations. Under both the HIPAA law, but also under current privacy and confidentiality laws, it's often very difficult to get a doctor to come to testify. We need legislation that says at the request of Adult Protective Services, Public Guardian agency, or a court investigator, that a doctor can provide a medical declaration and protect it with whatever confidentiality for the purpose of investigating or preventing elder abuse, that would be appropriate. But as it is now, much time is spent simply trying to get a medical foundation declaration from a doctor as to whether or not the elder needs help or not.

I said last, but actually there's one more. And that is, there are many elders who are competent who are taken advantage of. There are simply no current government or private agencies to assist those people. I know SALA tries to assist, particularly, in physical abuse areas, but when you have a competent elder we're often struggling with well why don't we see if they can voluntarily agree to a conservatorship so that deputy county counsel can assist them in getting their house back. Otherwise, we have no real standing to do anything about it. That's unfortunate. They shouldn't be subjected to conservatorship before they get help on their problems. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much, very helpful comments. We do in fact have two more cards. Anne Mack to be followed by Jack Christy. I believe those will be our last. All right, we're going to give you the last word Ms. Mack, we'll let Jack Christy step forward.

Jack Christy:

Thank you, Assemblymember. I appreciate the opportunity to speak today. I hadn't intended to speak, but I just wanted to push back a little on the comments made by the previous speaker, when it comes to lowering the standards of evidence in an abuse case. I work for the California Association of Homes and Services for the Aging. We represent not-for-profit providers of assisted living, low-income housing, and skilled nursing. We're finding that the abuse statute is presenting an opportunity for aggressive, plaintiff's attorneys to try to work out a settlement and get attorneys fees. Lowering the standard of evidence within an abuse case would just raise liability insurance prices to our members.

Our members, if you've read Pat's report, are the good guy members, the white hat members, the community based folks that don't have a lot of lawsuits. But nonetheless, we still get tagged with the cost of insurance, and the reason why we don't have lawsuits, mainly, is because most of our members are religious or fraternal-based organizations that have endowments, that they have been eating into to supplement the cost of care. So I just wanted to push back on that point. I wanted to separate out financial elder abuse and put a lower standard of evidence in for that. I guess we'd have no qualms, because that's not where the problems are arising for us. It's arising on the physical side. When you're in a nursing home situation you're with people who are in the last days of their lives. If you reach over to the telephone and you cut your skin, is that abuse or is that because your skin is just so fragile at that point in your life, that it cuts easily. Making those kinds of differentiations on a normal standard of negligence as opposed to the higher one on elder abuse statute, it's a necessary protection to have.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments. Anne Mack with the last word.

Anne Mack:

My name is Anne Mack. I am the chair of the Advisory Council for the Council on Aging. I am also a Senior Legislator with Bob Jaffee. On behalf of the seniors in Santa Clara County and the State of California, I want to thank you for the work that you've done in holding this hearing. Most of the people that have talked have represented most of the views that we have on the Council, and the Senior Care Commission and Senior Legislature. All I wanted to say was ,thank you very much for presenting this. I'm hoping that the Legislature will take your thoughts, considerations ,and your views and put some good legislation together for us, for the seniors of California. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your time and comments. If I'd known that was what you were going to say, I would've let you speak first, middle and last as well, Ms. Mack. Thank you. A couple of comments before we wrap it up. Thank you again to all the participants, our panelists and members of the public who spoke. Let me tell you where we go from here. As I mentioned earlier, there are a couple of other hearings, we have one coming up on December the 10th, from 1:00 p.m. to 4:00 p.m. in Santa Cruz in the Santa Cruz City Council chambers. We also have a slightly less formal, but wide-ranging discussion that's been scheduled for Monday, December 15th in the Redwood City Hall building from 9:00 a.m. to 10:30 a.m. Not just elder abuse issues, but issues important to older Californians. But the goal, as I've indicated at the outset, is to use this process to identify real solutions to real problems.

I want to particularly commend and thank the panelists and the members of the public who spoke today. Too often we hold hearings like this, and all we do is we look at the problems. There were a number of very tangible and very specific suggestions today in areas where legislative attention might be helpful. And in many instances, it does not involve expenditure of funds.

Without attempting to be exhaustive, at all, but to let you know, I was listening and that's why we have a tape, and that's why we have staff members from Sacramento who I want to introduce as well. We got a very specific question about whether or not we can save some dollars, and you were very helpful in this process, and we'll follow up on that. We also had comments about penalties, about data, about eviction law, about mandatory reporting, about inheritance issues, about privacy challenges, about burden of proof. Those are just some of the ones that were identified today, but I think will give us a lot to work with. I'm sure we will have more as we move forward.

The Select Committee process is one in which there is no formal consideration of legislative proposals. That happens in our various policy committees. But the best example I can give you is I also chair the Assembly Select Committee on Privacy. Using that vehicle, we ended up generating areas for legislation, a piece of legislation that was subsequently introduced, that was subsequently passed into law, and is today law in the State of California. So my hope and expectation is by your participation in this discussion today, that in the not too distant future you will be able to say, my participation made a difference. There are today laws on the books that might not have otherwise been passed and put into law were it not for your participation. I think that's it.

I do want to introduce and thank a couple more people before we call it a day. If I could ask both Dena Wilson and Lark Park from our Sacramento office to stand, so we can recognize them for making their way down from Sacramento. Dena and Lark, our staff to the select committee on elder abuse. They will be working closely with me and my colleagues in the coming year to try to take this information and put it into legislative proposals. You may want to take a moment after we wrap-up to introduce yourselves to them. Share a business card, if you have it. They've been taking copious notes, as well, during this discussion. Between their note taking, my note taking and the tape itself, which we will review of course, we'll be able to make sure nothing is missing from this. Thanks again to members who couldn't be here, Assemblywoman Lieber who has sent staff. And Assemblymember Manny Diaz who sent staff, and Senator Byron Sher. I know I saw staff as well from County Supervisor Don Gage's office and County Supervisor Liz Kniss' office. With that, I think I want to say thank you one more time. Please drive home safely, and thank you so much for your participation.

END OF HEARING

AGENDA
**COMBATING ELDER ABUSE:
NEXT STEPS FOR CALIFORNIA**
December 10, 2003 from 1:00 – 4:00 p.m.
Santa Cruz City Council Chambers
809 Center Street, Santa Cruz

1:00 – 1:10 pm Welcome & Introductory Remarks

1:10 – 2:15 pm Financial Abuse Panel: Problems & Solutions

- Prescott Cole, Senior Staff Attorney, California Association for Nursing Home Reform
- Terry Hancock, Directing Attorney, Senior Citizens Legal Services
- Ellen Pirie, Chair, Santa Cruz County Board of Supervisors
- Sandy Skezas, Supervisor, Adult Protective Services/Public Guardian, Santa Cruz County

2:15 – 3:20 pm Physical Abuse Panel: Problems & Solutions

- Joseph Fendrick, Special Agent Supervisor, California Attorney General's Office
- Brian V. Frankel, Supervising Deputy Attorney General, Elder Abuse Prosecution Unit, California Attorney General's Office
- Kathleen Johnson, Executive Director, Ombudsman/Advocate Incorporated
- Detective Sergeant Donna Lind, Scotts Valley Police Department

3:20 – 3:30 pm Break

3:30 – 4:00 pm Public Comment

COMBATting ELDER ABUSE: NEXT STEPS FOR CALIFORNIA

A public hearing conducted by the
ASSEMBLY SELECT COMMITTEE ON ELDER ABUSE
December 10, 2003 – Santa Cruz, California

Santa Cruz Hearing Transcript

Welcome and Introductory Remarks

State Assemblyman Joe Simitian, Chair:

All right ladies and gentlemen, thank you very much for joining us today. I want to begin by introducing myself and my colleague John Laird who probably needs no introduction in this venue. I'm State Assemblymember Joe Simitian. I represent the 21st Assembly District in the State Legislature from Palo Alto to points north and south. Perhaps more relevant for today's hearing I chair the Assembly Select Committee on Elder Abuse and with me today is my colleague John Laird who also sits on the Assembly Select Committee on Elder Abuse. Let me tell you a little about how we got here today and what we hope to do here today, and perhaps every bit as important, where we hope to go from this day forward.

My own interest and involvement with issues of elder abuse really began when I was a member of the County Board of Supervisors in Santa Clara County. And I see we have folks here from Santa Clara County today. I was working with the issue of financial abuse, as a member of our County's Children and Families Committee and also was a Member and Chair of the Public Safety and Justice Committee. I was confronted with a growing problem of financial abuse in Santa Clara County when I was a County Supervisor there.

Then later in the State Legislature, I tried to expand some of the things we had done to deal with financial abuse on a statewide level. Regrettably the budget situation resulted in a veto by the Governor of an attempt to take that effort on a statewide basis (AB 1111, 2001). Subsequently, I ended up doing some work on the issue of elder battery, and in fact last year, in the year 2002, the Legislature approved and the Governor signed a bill of mine that was designed to create a new crime, battery against an elder or dependent adult, and to increase penalties in those cases (AB 2140). And then this past year, some of you are aware, Assemblymember Darrell Steinberg and I were joint authors of a bill to deal with problems of abuse in nursing homes (AB 634).

So it's been a steady continuum of involvement, and frankly education on my part, that resulted earlier this year in a conversation with the Speaker of the State Assembly in which we came to the conclusion that it might be helpful to create a Select Committee on Elder Abuse to shine the spotlight on this important set of problems.

Let me help you understand what a select committee is. We do not in these committees actually hear or process specific legislative proposals. What we do is hold hearings throughout the state to hear from

members of the public and experts, who we'll have on the panels today. We do this to get a better sense of what the problems and challenges might be, but perhaps most importantly, to also ask for specific recommendations for solutions to those problems.

We had a hearing last week in Santa Clara County at the San Jose County Government Center. And we had, I thought, a very good turnout. Perhaps most important, we had folks who were really focused on specific recommendations for solutions to the problem. Understanding that the state is in a bad way financially, we tried to focus on solutions that might be possible that did not involve the expenditure of state funds. And I thought both the panelists and the members of the public did just a marvelous job of trying to focus on solutions to the issue of elder abuse that really might be practicable in the current economic situation.

So my hope is that when we leave today's hearing, that Assemblymember Laird and I, and then ultimately the other members of the Committee who will have the benefit of the tape from today's meeting, will have some practical suggestions about what action we might take at the state level to deal with issues of both financial abuse and physical abuse.

The format today is pretty simple and straightforward. We're going to have a panel of experts talk to us first about problems and solutions with respect to financial abuse. They will be followed by a second panel that will focus on issues of physical abuse, and then we will take testimony and comment from members of the public who are here today and who would like to speak. Our goal is to wrap up by about 4:00, and I think that should be doable based on the experience we've had so far.

Let me turn now to my colleague Mr. Laird and ask if he has any opening comments before we go directly to our panelists. I know one of our panelists has been delayed, but we do expect him along literally any moment.

State Assemblyman John Laird, 27th District:

Thank you Mr. Simitian. Thank you for having this hearing here. It's a pleasure to be back in this room and not be a mayor or council member. This issue first registered for me in the 1980s as a staff member for Santa Cruz County, I staffed the Nursing Home Commission and also the Long-Term Care Committee, and was real active in these issues and always appreciated the level of advocacy that existed in this community, in bringing these issues forward.

But interestingly, in this very room I authored an ordinance that the City adopted to provide a notice in every room of every nursing home advising residents of any nursing home in the City of their rights. And also interestingly enough, I think the real staff work on that ordinance was done by the person who happens to be sitting on the other side of Joe Simitian who was then a Directing Attorney for Senior Legal Services and assisted me in that effort. And as Mayor, I also led a tour of nursing homes in the region to make sure that people understood exactly what the issues were and opened the doors so we aired those in the local press and among the general public. And I think that level of understanding

helped policy makers make the kinds of decisions they had to make to best protect the people in our community.

And so I'm really pleased this hearing is being held here today, because Santa Cruz has a special brand of advocacy and I think it's good that we're talking about that, to highlight those issues here so that when this is broadcast on community TV and covered in the newspapers, that we really have a better understanding of what's going on in our very own community. But it is very exciting that we, as a state level committee will come to Santa Cruz and take what we hear back to the state.

I know the senior legislature has made some great proposals, the senior legislature that was originally authored by Senator Henry Mello from this local area. And, they do have some proposals on this that some of us are looking at very closely with regard to the next session. So I appreciate the chance to have this hearing here, that you're here today and am really look forward to taking it to the next step. Thank you.

Financial Abuse Panel: Problems and Solutions

State Assemblyman Joe Simitian, Chair:

Thank you very much Mr. Laird, and before we get started I perhaps should mention two things. One is we do anticipate that today's hearing will be broadcast on the California Channel, which is California's cousin to CSPAN, with which I suspect most of you are more familiar. But we do anticipate that the California Channel will be broadcasting around the State the results of today's hearing in specific.

The other is I see in the back of the room and I want to make sure I recognize, District Attorney Bob Lee who is here today. We appreciate your interest and concern, and it's good of you to be here today. Thank you.

All right. Let's go directly to the first panel, and let me thank each of them for being here. What I'd like to do is call on you in this order: Ellen Pirie to be followed by Sandy Skezas, to be followed by Prescott Cole. And I'd like each of the panelists to introduce themselves briefly both for the folks who are here today but also for recording the terms of who you are, what your title is and how that work informs your judgments and concerns about these issues.

Then if you could spend a little while talking about both the problem and also recommendations that you might have for state legislation that could address those problems. That would be helpful. We will perhaps interrupt with questions, but only briefly and selectively. And then once we've completed the panel we may have some questions from Mr. Laird or myself. So thank you. And Supervisor Pirie if I could ask you to begin, and thank you for joining us.

Santa Cruz County Supervisor Ellen Pirie:

Thank you, it's a pleasure to be here, and I want to thank Mr. Simitian and Mr. Laird for having this hearing today in Santa Cruz County, and also for the audience and the panel members for being here and willing to put their time into this. I know our state has enormous financial problems and I appreciate your willingness to take a brief break from those struggles to deal with this very important subject.

As Assemblymember Simitian said, I am Chair of the Santa Cruz County Board of Supervisors. But more importantly for this subject, before I became a member of the Board of Supervisors, I was the Directing Attorney at Senior Citizens Legal Services. And I was the Directing Attorney for some number of years which I can't remember now. Senior Citizens Legal Services, or what is known around here as Senior Legal, is a non-profit law office that provides free legal advice and representation to seniors. And one of our primary focuses there is on preventing or correcting elder abuse if it has already taken place. And we do that in a variety of ways. But in spite of many, many efforts to prevent elder abuse, we would on occasion, on a regular basis in fact, see situations where an elderly person had been taken advantage of.

One of the crucial things that I would like to focus on is the role of a notary public. And a notary public in California is a sort of under appreciated position. It's a position where you go and you sign very, very important documents. And having that notary signature and stamp on it allows other people to trust that document is in fact a valid document, executed appropriately.

It's really common, well in our office it was all too common, to see a senior who owns a home here, and has a relative, a caregiver, a friend, a neighbor, who doesn't own a home, and this is partly to do with just the cost of housing in Santa Cruz County, and probably in California in general. There's certainly a large portion of the population that considers themselves excluded from the possibility of ever owning a home. And, they see a senior who owns a home, and I think they sometimes think that, "Well, there's my opportunity for the American dream, to become a homeowner." And, often in fact, they don't necessarily see themselves as doing anything wrong in their efforts that way. That can vary, sometimes it's wrong from the get-go and sometimes it starts off innocently and morphs into something else.

The person who owns the home, the senior, is often somewhat confused, but still able to live at home and maintain. They may be isolated by illness or disability. They may be isolated by inability to speak English. As a result, they're dependent on other people. That dependency might be a dependency on a relative, it might be a dependency on a caregiver. That may be the only person they see on a regular basis. Or even a neighbor who comes to check on them on a regular basis.

The facts come out in a variety of ways. We've seen situations where a child prepares a deed and has their parent sign that deed. The deed, I remember one case we had where the parent was Spanish-speaking only, and the deed, of course, was in English. The parent did not know that what they were doing was giving their home to their child. So they signed the deed, and the deed unfortunately was notarized. Now, if we get notice of what's going on at that point, we can intervene and can often be successful. So at that point if they sign the deed and then an attorney or the police or someone finds out what has happened, it's relatively easy to get that property back if you can establish that person didn't know what they were signing. But, what we frequently saw is that isn't where we got involved.

We got involved one step later which is a crucial step. It's the step where the person receiving the home then mortgages or sells the home. So, there is then a third party involved in the transaction. A party who relied on the deed, who relied on the fact it had been notarized, who is then what's called an innocent third party. And in California, that innocent third party has the right to rely on what appears to be a properly executed document, which in the case of a bank or something like that, they would see absolutely on a routine basis. As long as they had no reason to believe that there wasn't something routine about it, that there was something amiss in the signing of that document.

We had another. We had a case where we had a gentleman who could no longer read, and he signed a deed to his I think it was a caregiver in that case with the express promise, not written, but a promise that he could continue to live in that home even though he understood he was giving the home away. But there was a promise he could continue to live there. He then went into the hospital, and while he was in the hospital the caregiver sold the home. So when it was time for him to come out of the hospital, he had no home to go to. But the person who had purchased the home had no idea that another promise had made about a life estate.

So, what these all have in common is that the senior had their signature notarized. And in many of the cases we've seen that should not have happened. There were enough red flags that I think a notary should have said, "Wait a minute. There's something wrong with this transaction." Either I can see that the person signing it can't read it and can't answer simple questions about it and doesn't know what they're doing, or that it's in a language the person doesn't even understand. Or we've seen it where the person signing the document speaks one language, the notary speaks another language. One of the fundamental ideas of a notary public is that you form a relationship, a limited relationship, but you speak the same language and you communicate. So the notary knows that this document is being signed freely, and knowingly.

So I guess my suggestions would be, first, some of these may already be requirements but are unenforced. These are very much things off the top of my head, and I'm sure there is more for people who really know the notary situation better than I do. There are people who could come up with better ideas. But, a few of the things are, I would say that a notary should only notarize documents that are in a language that that notary reads. They should notarize, the only exception would be, I would say, if a translation is provided for that notary and is made part of that same document.

A notary should always be required to speak to the person, to ask simple questions so that the notary can know that in fact this person understands, at least on a basic level, what the document is, and understands, at least on a basic level, what that means. A frequent situation is that someone brings the disabled senior to a notary, and in fact does all the talking. And that should not happen. A notary should never allow that to happen. The notary should, if the feeling that the person who brought him is in fact controlling the situation, the notary should speak to the person who is going to sign this document alone. They should ask the family member or caregiver to leave so they can talk to this person and get answers from them in their own words.

I also think it would be very valuable, and this is something I'm taking as a lawyer, we have something, an ethics hotline, an 800 number that if you come across an ethical problem, you can call the hotline and see what they have to say about it. I think the same thing would be very useful for notaries, and so that there would be maybe a very simple notary canon of ethics and a hotline to call with questions. Because every situation is a little bit different and it's hard to anticipate what all those situations might be.

I think the state needs to do a better job at educating notaries about what their responsibilities are. They could send regular reminders to the notaries which would help keep a notary from getting careless, which happens over the years. They just, you know, they just slowly get a little bit more casual and develop bad habits.

But I also think it's important to prosecute, to prosecute notaries who violate the code of ethics, and I think it's important to publicize those prosecutions, because that sends a message to other notaries that this is a very serious responsibility that the State of California is entrusting to you, and you need to take it very seriously, and you need to protect the people who are trusting you to do that.

It's really important that notaries be frequently reminded of the risk that they're taking for themselves, but more importantly for the harm they could be doing for the person for whom they are notarizing. I recently looked, the state issues a booklet to notaries. And it is very dry to say the least. And I started reading, and I'm a lawyer so I'm used to reading this stuff, and you know, after a couple of paragraphs I was starting to fall asleep, drift off. It needs to be rewritten in a way that is usable and people will really understand and recognize the situations that the booklet attempts to address.

Like I said, I'm sure there are other steps that could be taken to improve notarization of important documents, and I hope the committee will explore it in greater depth.

I want to thank you again for investigating these problems. And most importantly, for looking for solutions for these. I know that the state is in a serious financial situation, so I have tried to focus on those that really would take no increased funds. It might be a little more work for a little bit of staff, but not too much. And, I want to thank you for the opportunity to give you my thoughts on the subject.

State Assemblyman Joe Simitian, Chair:

Thank you very much Supervisor Pirie. Any questions before we go to our next panelist? All right, thank you. Sandy Skezas, would you introduce yourself and tell us who you are and the work you do and share your thoughts about the nature of the problem and any potential solutions.

Sandy Skezas:

All right. Thank you for your time, I appreciate your interest in helping us combat our concerns about elder abuse in Santa Cruz and throughout California. My name is Sandy Skezas. I currently supervise Adult Protective Services for Santa Cruz County, in addition to the probate side of the Public

Guardian's Office. I'm going to talk to you about three different things today, and at the end add my request for what I'd like to see the Legislature change.

The first thing I want to let you know in case you didn't know about it so far is just what Santa Cruz has been doing to combat elder abuse, specifically financial elder abuse and dependent abuse, because we look at them the same way. In 1999, SB129 passed and that changed elder abuse for the State of California. All the money flowed in briefly, we hired staff, and started seeing really good change.

Things changed in the last year or so. We did lose 40% of our staff. However, in this same time period, when we were losing staff, we had great successes with what we call the FAST team which is the Financial Abuse Specialist Team. And that Team was started in late 2000-2001. We were actually quite happy to see AB1111 go through, attempt to go through, because we were doing our thing anyway, and it would've been nice to have recognition from the state to be able to support that. And maybe at another financial time, we'll have that chance again.

But the team, just so everyone knows who makes up the team: Adult Protective Services, social work investigators, the District Attorney's Office with their investigators and their attorneys, and law enforcement, we have five different jurisdictions in town plus the sheriff. And of course county counsel oversees what we do. The Ombudsman serves, since they do investigations for facilities. We in Adult Protective Services investigate independently. We all come together on an every other month basis to discuss cases. The idea of the FAST team is to be able to respond quickly.

In the last 2-1/2, 3 years, we have been responsible for over \$30 million of savings and restitution for the County of Santa Cruz. And one might wonder how can we come up with those kinds of numbers. And really, real estate in Santa Cruz, anyone who owns a 2 bedroom-1 bath that's in reasonable condition owns a half million dollars. We recognize that and take that into account when we do our investigations and try to interrupt the process of the crime as we proceed.

So I want to let you know that's what's happening so far. It's really between APS and the Ombudsman with our support and responsibilities, and the District Attorney's inspector, helping us with the law enforcement side, and then of course the prosecutors which we couldn't do anything without them. It's been a fairly successful endeavor, I think, the last few years. We're very grateful for everyone's willingness to participate. So I did want to let you know about that.

A couple of examples I thought I would share with you of some cases, some clients, that we've dealt with in the last few years. Just to give you an idea of whom we are working with. One example, and this was in the paper quite a bit so it may sound familiar, we did have an 88 year old female with dementia who was victimized by two separate caregivers. One who had lived in the home first for 6-8 months, and had done a fairly unsophisticated, frankly just stealing the checks and writing the checks and having her sign them. She was actually arrested in the bank parking lot and boxes of checks were found under the seat of her car.

One thing with financial crimes, they're easy to track because the paperwork is everywhere. It's just a matter of, the thing we get caught up on is capacity, did someone have the capacity to be able to sign that, sign the checks and approve what the perpetrator said she had done. Female perpetrator, female victim. She then handed off this client of ours to the next group. She left and the second group moved very quickly.

This was one where this gentleman and his partner moved in. We think, actually they might have been married at the time, say girlfriend, the girlfriend may not have known the majority of what was going on, but he knew exactly what he was doing. Created a rental agreement with obviously very poor terms. Didn't involve any money coming from them. Gave himself loans, transferred her car into his name, attempted to cash CDs, mostly on Saturdays, isolated her systemically from her family and her friends with a lot of negativity about what the family was or wasn't doing to be able to serve her. And even went so far as trying to get a power of attorney. The good thing was he took her car and was ultimately apprehended because it was a stolen vehicle. And we do appreciate how all law enforcement work together.

State Assemblyman Joe Simitian, Chair:

That's the good news in a bad story.

Sandy Skezas:

That's how he was ultimately arrested and the DA inspector actually was the arresting officer, which we appreciated, and he really got into this. We all recognized this was a bad guy and it was just a matter of trying to get him. He was ultimately arrested. They both served jail time. I believe he got the highest amount which was a year at that time.

She (the elder client), however, did lose the majority of the money to the first perpetrator, which was \$15,000 in checks. The bank chose to reinstate only about \$5000, which is another issue in terms of us working with the banks. She was held accountable because it hadn't yet been determined by a doctor that she was incapable.

In this County, until a judge determines you're not capable, you're capable. Which can sometimes make it very difficult for us to do our jobs. At the same time, we protect, we're sometimes working to protect people in spite of themselves. At that point, they perhaps don't understand that they're in the kind of danger that we know them to be in. And we certainly knew this one was in danger.

So ultimately everything but that \$10,000 was restored and she did live out the rest of her life in her home, which luckily was not taken from her. And I think she actually died in her home ultimately.

Another example. This would be an 89 year old male, also with dementia, victimized by a friend who, as it turns out, was also a senior citizen. He had befriended the client and his family, had convinced the family, he actually signed himself as an attorney, I believe that's illegal, signed himself as an attorney and

accepted an inheritance and assured the family he (the senior) had ultimately been placed in a care facility.

Well, he hadn't been. He was living, he was hospitalized by the time we found him. When we went to the home, and this was the brilliant work of the Sheriff's Department, and really a lot of work has gone on educating law enforcement and myself and the ombudsman, the DA's office, representatives of law enforcement that have gotten on board with us. We've gone out and systematically hit every jurisdiction, handing out copies of the Penal Code 368 which is the elder and dependent adult abuse statute. Trying to get everybody on board to understand that this is a crime.

And the sheriffs did a brilliant job. They immediately went and photographed everything before this friend could get over and change things. For example, he had a bed delivered, and you would think why would you have a bed delivered, except this man (the senior) lived in this tiny little house in a straight back chair. And I don't mean like this, I mean a straight back chair. And so he sat in it, he slept in it, he did whatever he did in that chair. He had no TV from what I understand, no bed. And the hospital reported it appeared he had not removed his shoes in over a year.

So I'm going to assume you guys are bathing on a regular basis and trying to understand what it would really be like to not bathe for a year. If you don't have the capacity to recognize the need to do that, you may stop bathing too. And so nobody was really caring for him and that's what happened. And it was quite shocking for the emergency room once they finally removed his clothing, and checked on him. Of course that was very dangerous and he was obviously at great risk.

So he actually is now in a care facility, is being cared for, and he didn't lose his home. When he went into the hospital, this friend immediately showed the property to realtors. He also had squatters and allowed squatters on the property. I think a boat and a trailer where he collected rent and didn't provide that to the owner of the property. And of course the owner never knew. And the other people on the property, which I think is criminal, who were living there and not addressing the concerns of this man which were so evident to anyone who recognizes health and safety issue for someone who's elderly.

So those are just a couple examples so that you know what we're dealing with. We can be dealing with someone who has dementia in their fifties, we can be dealing with someone who's completely competent in their nineties. We regularly run across what's called a sweetheart scam, where we have an elderly woman, for example, I'm going to be talking to you concerning my request about changing, adjusting sentencing orders to reflect not working with the elderly and dependent once you've been convicted.

We have an elderly woman who is in love with, in her mind and I trust that she is, a lovable man who's been in and out of prison. The last time he was back in so fast his orders, his orders actually read no contact with this family, with this woman. And he did (contact the elderly woman) immediately. I think it was tracked on the telephone and his mother actually helped him, the mother was younger than the woman he was in love with, and helped him have contact with her. Luckily there was a family member in the home at the time, who caught that he was on the phone with her, contacted his PO (parole officer)

and he was arrested by the time he got to the door. So the good news was he was in and out of prison only for a few hours and didn't have a chance to get access to her.

The specific thing we were talking about, that we're requesting is specific probation terms in sentencing orders, restricting the convicted party of a misdemeanor or a felony from contact with the elderly or dependent adult for the duration of probation. We'd prefer for life, we recognize we can't control that. But while they're on probation if it could just be stamped, in however way it works. I'm not an attorney and I'm not sure how it works in the court system.

What happened just in the last few months I've had some great interactions with the adult protection officers in town, and we've had discovery. For example, we had a discovery of a woman who's perpetrated so many people in town, but as it turns out has only been convicted of one misdemeanor, and unfortunately on her sentencing order it did not say don't work with the elderly or dependent. And we found out she was employed, not currently because she's not anymore, she was employed recently at a facility where the elderly reside. She was employed in housekeeping which meant she had an access to a key to every apartment in the building, which was very alarming for us.

We called probation. Turned out it (a prohibition against working with the elderly) wasn't on the order. They had to then go in front of the judge and request it, and while we were going through all these motions, she was fired on her own. Which was to our benefit. And it was to their benefit getting her out of there. But nonetheless it would have never happened if the sentencing order had read she wasn't allowed to (work with the elderly). And what she did was she ended up perpetrating the people there and we're now looking at some of the claims that have come up in the last few months, that seem a bit odd. And once we all put it together that she was working there at that time, there may be greater cause for concern.

The catch is we don't want it to say that it's only PC368. The Penal Code applies all the way across the board. 368 is a good tack-on, it adds extra time, it adds extra penalties if you injure someone who is over the age of 65 or 70, and if they're qualified as a dependent adult. So, specifically anyone that has any contact in any way who perpetrates against the elderly or dependent regardless what the penal code says, we'd like to see there'd be a prohibition on that (future contact).

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments and thank you for the specificity of the suggestion. And when we get these, we will of course have staff follow up after today's hearing. Thank you.

Sandy Skezas:

Thank you.

State Assemblyman Joe Simitian, Chair:

And our third panelist today is Prescott Cole.

Prescott Cole:

Thank you very much. I'm Prescott Cole. I'm the Senior Staff Attorney for California Advocates for Nursing Home Reform. I'd like to take this opportunity to thank the Chairman, Joe Simitian, and also John Laird. This is very exciting for everybody who's involved in any kind of issue that deals with elder abuse to know there's a Committee on Elder Abuse.

I've been an attorney with CANHR for the last eight years. CANHR is actually an organization that has been in existence now for over twenty years. Our central focus is on issues of long-term care, hence the name California Advocates for Nursing Home Reform. We actually started out with a better name which was Bay Area Advocates for Nursing Home Reform, which means we were BAANHR. Somebody a long time ago must've seen the Morehouse mustard flag and copied that. Then we went statewide so we're California Advocates for Nursing Home Reform.

We track all the activity that you can track in nursing homes through the Department of Health Services, OSHPD, which is Office of Statewide Health Planning and Development, and other information that comes in. And we get all this information about the 1400 nursing homes, we put it in a form on the website so consumers can track what's going on in nursing homes. So if they have to make a decision about going to a nursing home, they can pick one that's not just close to home, and doesn't smell too bad.

There is a great fear around nursing homes, it's not only the bad care that happens in some of the facilities, it's how do you pay for a nursing home. And this is where we intersect with the crimes that are perpetrated against the elders. Elders are panicked about if I go into a nursing home, how am I going to pay for it, and that's where the scams begin.

Now, our organization probably knows more than anybody else about Medi-Cal for long-term care. That's the pay system that the government has for individuals who will be in a nursing home for a long period of time. If you're going to be in the facility for a year, two years, whatnot, how will you pay for it. If you reach a certain criteria, if your finances, your assets, income, is at a certain level, you will qualify for this program.

Now, there are legions of people out there who have these little scams, these little ideas, these little tricks to get onto Medi-Cal. And what they are is individuals that have come up with an idea to make themselves phenomenally wealthy. My father's 82 years old, and I asked him, "Dad, do you get these invitations for living trust seminars, or how to protect the home in case you go into long-term care?" He told me he could build a bonfire with the information that comes in. And I'm sure all of you have that kind of material coming through the mail if you're over 50.

Now, if you go to one of these seminars, and probably most seniors have been to one of these seminars, there's a hook, and the hook gets in there early. Well, a senior who comes to a seminar,

who's going to be sitting down for an hour, hour and a half, and then at the end of that period is going to make a decision on the way they've been holding their assets for the last 40-50-60 years, it's got to be quite a hook.

And here's the hook. If you ever go to one of these seminars, this is what they do. First they'll joke, and they'll talk about how much they love elders. Then they'll say, "Seniors, you have a 50% chance of going to a nursing home," and they say, "The sad fact is, 50% of the seniors go into the nursing home. The average stay is two and a half years. You'll become completely impoverished, everything you've saved your money for, everything will be taken away from you. But the good news is there's a government program called Medi-Cal. Stay with me the next few minutes and I'll tell you how to preserve all your assets, pass them on to your relatives, get the same kind of care you would for private pay." And that is how the approach goes.

I have told a big nasty lie, a couple lies, but the biggest lie is the hook which is lying about the statistics. 50% of the people do not go into a nursing home. And certainly of the people that go into the nursing home, this is coming from OSHPD, Office of Statewide Health Planning and Development, they track admissions into nursing homes, and they say roughly this, "71% of everybody that goes into a nursing home will leave in 90 days, or before 90 days." So a legitimate sales pitch would be "Seniors, you have an 8% chance of going into a nursing home, thank you very much. Stay for the door prize."

These people will rake in a phenomenal amount of money. What they do is they use the existing regulations of Medi-Cal and then they tell the individuals that they are going to transfer these assets and make them exempt for purposes of qualifying for Medi-Cal. Many times these assets are already exempt for purposes of qualifying for Medi-Cal. The house is exempt. The house is the biggest single asset that an individual has and yet these sales people will say you have to sell the house. Or they have an IRA. The IRA is exempt for purposes of qualifying for Medi-Cal. They will be told to cash out the IRA and here it comes.

All this money has to get going and flowing because they want to sell an annuity. They make from 10-15% on these annuities, and it's huge. We're not talking about thousands of dollars, hundreds of thousands. We're talking about hundreds of millions of dollars. Now remember, only 8% of seniors are going into the nursing home for more than 90 days. More than that, the seniors who are purchasing these items, these annuities, aren't even close to going to a nursing home.

I actually know this woman, her name is Marguerite, she's 81 years old, she purchased a 11-year deferred annuity. She put \$604,000 into an annuity she can't touch for 11 years. The salesman left her with \$20,000. It's a legal product. The product is legal. It's just how he did it. He told her this is how you're going to qualify for Medi-Cal. She lives at home. She can't qualify for Medi-Cal for long term care, she's in her home. And if she goes in to a residential care facility, that's the assisted living place, they don't take Medi-Cal. So she would have to go directly from home into a nursing home to get any benefit. And in fact, she wouldn't get any benefit because the annuity won't pay out until 11 years.

Another individual, she was 83 at the time, she visited her attorney, her attorney sold her an annuity. He said you should take \$250,000, cash it in and buy an annuity to qualify yourself for Medi-Cal. She was 83. She had one living relative. She got \$30,000 of capital gains liability for cashing that in, and the attorney made \$25,000 for selling the annuity.

There's an organization out there, there's several organizations, and what they do is get people involved in getting so worried about going on to Medi-Cal that they'll say we will pre-qualify you for Medi-Cal. The sad fact is you may pre-qualify for Medi-Cal, but the way the nursing home industry is, they don't have to take you if they don't want to. Once you're in, you're in, but they don't have to take you if they don't want you.

So if you say, "Hi, I'm Prescott Cole. My Dad wants to be in this facility and he's on Medi-Cal." They'd say, "I'm sorry Mr. Cole, at this time all our Medi-Cal beds are full." Without getting too technical, you know, they can do that. They can say we don't want you. If he was in the facility on private pay, spends down whatnot, they cannot kick him out as long as they do take Medi-Cal.

There's the other problem of the placement. Like say for Marguerite, \$604,000, well if she wants to go to the best nursing home in her area, which would probably be private pay only. She can't get in; her money's locked up. And she says, "Well I qualify for Medi-Cal," they would say, "Sorry Marguerite, we don't take Medi-Cal." So you see, that would be kind of a bum.

Then there's the macroproblem with all of this money. I'm talking about millions, if not billions of dollars, in the State of California locked up in these annuities. That doesn't help California at all. Because an individual can't help his or her granddaughter to go to college, or even buy a Christmas gift. It's all locked up, not even in California. It's in companies that are out of state or even offshore.

What we want to do, for looking at legislation, is to try to address the problem before it becomes a problem. Yesterday, our organization did a training for the Department of Insurance about this very issue. They've had cutbacks. The Department of Corporations has, from what I understand, had all their investigators eliminated. Adult Protective Services, they've had cutbacks after Senate Bill 2199 went through.

The money is not here in the state. We all know that. So focus has to be on prevention. It has to be on prevention because there's nobody out there to rescue you. If you goof, you've had it. The district attorneys are overworked. They can't go after a misdemeanor felony, I'm sorry, a misdemeanor fraud.

You have seen some of these ads out there. They will say "living trust, \$399". That's a dollar short of a felony. There's a reason why some of these things are the way they are. Even if the district attorney had the capability, there's 175,000 individuals who are licensed to sell annuities in California. Probably 99% of those people are great people doing great things. But 1% is a huge number. Who can go after all those people? Nobody can.

The Department of Corporations has a program called SAIF, Seniors Against Investment Fraud. A wonderful program. In one week they stopped 12 seniors from buying annuities, the total amount was 9 million dollars. That's how huge this is. It's out of control.

There's one non-profit group out there that consists of just one lawyer. This lawyer's law firm consists of one paralegal and 32 annuity salesmen. They'll guarantee to get you onto Medi-Cal. The fee for services starts at \$7,000 and then they take an additional percentage of the assets. If somebody has a house down here, that house would probably be worth \$500,000. Maybe the elder is on social security and has a total income of \$600 a month. If they can't pay \$7,000 for the services of this "non-profit", no problem because the law firm has a finance company and they'll refinance the house so the elder can pay for services.

Okay, now the worst I've heard so far. This attorney once charged a husband and wife \$68,500 to pre-qualify mom and dad for Medi-Cal. They're 90 years old and they have \$3 million. The elders became so confused and upset they signed the contract.

So our recommendations would be to get some kind of language where you would have an expedited reporting system. We have referred numbers of people to the State Bar. It's very cumbersome. They have a report generating system where you have to send everything down to Los Angeles and hope it filters through. Now I'm one of 200,000+ thousand attorneys in California, the number one complaint against attorneys is not answering their phone calls. You can call me up, but don't complain if I don't answer right away. It's very difficult, they have so many complaints what can they do? It would be great if they had an expedited system so they can get all reports about elder abuse quicker.

Now the Department of Insurance, Department of Corporations, all government entities that deal with collecting complaints on licensing should have the same thing, an expedited system for getting the complaints of the elders. Elders don't want to complain. I go back to my dad, who had a successful business, and some people still owe him money. He will never go after those people.

Another thing we'd like to see...

State Assemblyman Joe Simitian, Chair:

Let me just interrupt you if I may. You mentioned the importance of expediting reporting systems for elder complaints, in particular complaints involving elder financial abuse. I think you referenced the Bar. I thought I heard you reference the Department of Insurance. What are some of the other agencies where you would think this is appropriate?

Prescott Cole:

Well, the Department of Corporations certainly, but I've heard they've cut back on their numbers. I think they knocked off all of their investigators. And, these are only the departments we work with, so certainly there are other ones for the contractors or whatnot.

Everybody that issues a license, they have a system for handling complaints. And it's just that, my point about my dad, is just to say it's very difficult for him to make a complaint about anything. And normally if there's a complaint coming up that we hear in our organization, it'll come from somebody that's in a crisis, or sometimes it comes from the children. It's all about what happened to the elder.

It's very difficult. Law enforcement and Adult Protective Services, they know how extremely difficult it is. The district attorneys, even though they have this great new statute that allows them to photograph an individual, I think it's Penal Code 1380, something like that, but anyway it's still difficult to get somebody to testify. Because at that point in life, they (our elders) don't want to spend the time worrying about being retaliated against, or being bullied. And some of these perpetrators are thugs. They're seemingly pleasant people, they seem nice, but they are tough. They are tough and they will go after you. I don't want to get too far into that.

The other thing would be a rebuttable presumption. In the law, when you're trying to prove something in Civil Court, it's more likely than not it happened. A rebuttable presumption would switch it around. You would still have to prove it, but the onus would be on the defendant. If the individual is an agent or the individual is a fiduciary, he or she has a special relationship. Or if the individual is a caregiver and there was some kind of a transaction and the caregiver or fiduciary or agent has raided the elder's accounts and the elder is left with almost nothing or a really diminished place, in a court of law, it should be a rebuttable presumption -- meaning that it's up to the defendant who got the big benefit to say this is the way it really happened. It's shifting the burden of proof. So that would be good.

And the thing with trust mills, we would like to see a crackdown. (The reason they call it a trust mill is because the same trust document is sold to everyone. They are blank documents where the only thing to do is to fill in the blanks with the name of the trustee and beneficiary.) The trust is a loss leader. You're invited in to hear free legal advice. Incidentally, these are people who are not lawyers primarily. They'll tell you about the laws, the state laws, the federal laws, the regulations. But they're not lawyers. They call themselves certified advisors, Medi-Cal advisors, (or some kind of qualified expert).

To become certified with one of the organizations, get the fancy literature and a nice card, you pay \$900 and they give you the material. Now you're certified. We had a hearing last year with Jackie Speiers' office and there was a person called a Certified Senior Advisor, who said her competitors were attorneys and CPAs. And when Senator Jack Scott asked her, "Well your competitors are CPAs and attorneys and you went to three days of class?" "Yes," was the answer. I'm not saying she didn't believe they were on equal footing (with CPAs and attorneys), but she's not.

Anyway, these people who put these trust mills seminars on have a goal of getting the elder to invite them home. They want you to invite them into your house. And in your house, they're trained to stay up to 10 hours or more to wear you down, to make you sign for that product.

You hear over and over, "Gosh in the times gone by people, a handshake was good and we trusted..." There was always something else going on, dementia. 5% of people over 60 years of age have some

form of dementia. When you get to be 85 years of age, it jumps to about 30-31% of people who have some form of dementia. And APS will tell you, when they walk through the door of somebody who has severe dementia, they have lost the ability to guard themselves. You can walk right in, they don't even put up their arms. So seniors are the target. Why? They have 70% of all the wealth and that makes them a great target. They make bad witnesses, ever so much the better.

We'd like to see a crackdown on individuals who parlay their expertise on government monies, like Medi-Cal or something, and charge exorbitant amounts. So there should be some kind of control, just as there's controls on attorneys that close estates. You have statutory limits or something (on what they can charge) when you're moving these kinds of assets around. And they are moving hundreds of thousands. This one non-profit I told you about brings in \$500,000 a month, just like that, for qualifying people who don't need Medi-Cal for Medi-Cal.

State Assemblyman Joe Simitian, Chair

Excuse me, just to be clear. When you're talking about a crackdown, is that primarily in the form of a limit on fees? Or are there other things that would be appropriately part of such a crackdown?

Prescott Cole:

Well, I would sincerely like to see, maybe even though the statute on practicing law without a license is broad, I think in this instance it should be narrowed to something where if you're talking about qualifying somebody for Medi-Cal and you purport to be giving information about what the government regulations are, you are practicing without a license. That should be very well regulated because you are talking about public funds and you're talking about people who are putting themselves in a financial straight jacket for the rest of their lives.

And the last thing I'd like to say is I've been to a number of seminars when they talked about elder abuse and one thing that comes up is if an elder has been financially abused, their chances of death increase three-fold. They don't recover. And there's nobody out there that has enough resources to help you after it's happened. Things have to happen ahead of time. The agents that do this are not pursued. And they, the way they get away with it is a wink and a nod. Even though we argue they want to shake my hand at the end, they want to say I know you disagree with me, but you respect me. I won't give them that, but they're looking for respect.

State Assemblyman Joe Simitian, Chair:

We have a lot of colleagues that do that.

Prescott Cole:

Thank you very much for your time.

State Assemblyman Joe Simitian, Chair:

Thank you Mr. Cole. I think Assemblymember Laird has a follow up question.

State Assemblyman John Laird, 27th District

Yes, I wanted to ask Mr. Simitian's question in a slightly different way. And that is when you call for a crackdown, are you saying that existing law is adequate, it's just the ability to enforce it has gone away, or are you actually talking about additional law?

Prescott Cole:

Well, there are so many statutes on the books, and you could cobble something together but nobody's doing it. You can take the 17200's, and you can get Penal Code 368 and get the DAs interested in it. And for the Civil Code, you've got the Welfare Institutions Code, the EADACPA which offers some remedies, which incidentally requires clear and convincing evidence of oppression, fraud, malice or reckless conduct. Very hard to get.

The Civil Bar's not taking these cases. You have the litigators that go after things they can identify. They know how to do it. They don't go after the numbers stuff. Fraud? They don't get it. And the people that practice estate planning, well they know it's wrong, but they're not litigators and they don't want to get into it. So the laws have to be essentially redone, refocused. So it's easier to use.

I think the Civil Bar needs to be attracted into this area. The Attorney General had a wonderful bill a couple of years ago which enumerated the remedies. It enumerated the remedies for practicing without a license except it gave it to district attorneys, the attorney general, and city attorneys. They left out the consumers. Because the insurance people came and said don't want to have the consumers in there; they don't want all these lawsuits. The civil bar should be encouraged to take these cases. I mean, there's enough attorneys out there, God knows, but they're not on these.

State Assemblyman John Laird, 27th District:

What you're really talking about is actually not on the public side, but on the civil side. Having enough remedies that people would have incentives to do representation in a way that protects elders from some of these scams or abuses within the private legal system, as opposed to some public prosecution or enforcement on that side?

Prescott Cole:

Yes Sir. That's fair to say. With a little bit more for the public side, if you can have a more useful definition about practicing law without a license (to help law enforcement go after these individuals.) There's a magic in a misdemeanor, and the Attorney General really proved it with going after one person in a facility that did not report an incident of abuse they were required to report. The report she

didn't do was when a CNA, certified nurse assistant, choked an Alzheimer's victim. Actually that person was arrested and prosecuted, but the administrator didn't see that as abuse and didn't think about reporting it. The simple activity (misdemeanor) against the administrator by the Attorney General sent shockwaves through it (the industry). So if you can, you know, ...

State Assemblyman John Laird, 27th District:

But a follow up question. I happen to sit on the Assembly Judiciary Committee and we're in this unusual situation where of the 32 new Assemblymembers this year only 3 are attorneys. They don't happen to be of my political party. So if there's any of us who are first term members that sit on the Judiciary Committee that happen to be Democrats, none of us are attorneys. And we are grappling with these issues. In a way, 17200 and other things are primal, and they are mentioned in almost everything. Talking about even utilizing or expanding 17200 is the equivalent of raising a red flag in front of anybody at the capitol building right now.

Prescott Cole:

I understand. Yes.

State Assemblyman Joe Simitian, Chair:

For those of you wondering what on earth we're talking about up here, we're talking about Business and Professions Code Section 17200, which is the body of law in California that allows for the public to address unfair competition and unfair business practices.

State Assemblyman John Laird, 27th District:

And I'm complimented by the fact there was that correction because having not understood almost everything in a hearing the first year, to be able to be corrected with more detail was good. So the point is, if one of us decided we wished to take this on, is this broad enough in its application, is its need demonstrated throughout the state, that people are going to come out of the woodwork from across California to speak to the need for this. Or is it really a narrow group of advocates that have had experience with this that understand it clearly?

And I'm not arguing it's not right or not just, but in that climate that's the kind of demonstration that is needed to push it forward. I'm just asking in your assessment if there's the ability across the state to make that kind of demonstration?

Prescott Cole:

I would say, if I'm interpreting correctly what you're saying, that if you had a law that solidly addressed it, would there be a floodgate of litigation? If that's a concern, there wouldn't be.

State Assemblyman John Laird, 27th District:

I'm asking actually would there be a floodgate of advocacy that would open for this. Is its need understood throughout the state in a way that people come forward and say, "Geez, I was victimized in a similar situation," or "I represented somebody who was victimized in a similar situation." And, it won't drop into the usual polarized argument.

Prescott Cole:

Yeah, it's a rock that would slowly be pushed up the hill. A week ago the California district attorneys had a conference on elder abuse and domestic violence. Law enforcement is just starting to become aware of elder abuse issues, but it has a long way to go.

And the number of civil attorneys that could get involved are not there either. Even if you can make the law so it could be user friendly, you're not going to get a floodgate but you are going to get enough cases there whereby the (people engaged in this activity will realize there are consequences. This will serve as deterrence.) Now there's not going to be thousands of people put in jail. There'll be a couple of people, maybe. But the industry will start to see this is the wrong practice. "We won't do this anymore. We'll find something else to do."

State Assemblyman John Laird, 27th District:

Thank you, you were very helpful with the answer to the question.

State Assemblyman Joe Simitian, Chair:

Appreciate your passion on the issue. Let me briefly recap and go back to our panel. We heard from Supervisor Pirie about the issue of notaries, the roles and responsibilities and perhaps the value of addressing the roles and responsibilities, as well as the education of notaries. We heard from Ms. Skezas about the importance of sentencing orders, particularly with respect to the provisions of sentencing orders that preclude contact either with someone who's been a victim or with some other elder or dependent adult in a work setting, subsequent to the time the probation order expires. As I understand it. Then we've heard about annuity scams and expedited reporting requirements, the burden of proof and perhaps a shifting in the burden of proof, as well as the difficulty of trust mills. Let me go back to Supervisor Pirie and Ms. Skezas and say were there comments the other panelists made that you wanted to add to, comment on, or have questions about?

County Supervisor Ellen Pirie:

One thing we had talked about, our panelist who was going to be here Terry Hancock, he's ill and isn't here. I don't know a lot about, but Sandy may. There are people who are called mandated reporters in California, where they're required to report elder abuse. And one of the things we talked about briefly

was the possibility of having some people who see the financial transactions going on added to this list of mandated reporters.

Sandy Skezas:

There was a banking bill in 2000, I believe, that ultimately never made it to the floor. I think the two factions picked their sides and said it wouldn't go. I know that Marin County, and I apologize I did leave this to Terry to do, but I know Marin County had put together a program to train people who work in banks. Oregon had done something similar years ago and we have those materials. Now that it's in Marin, it appeared from the materials they sent, that we absolutely could encourage bank employees to be the reporting party in the circumstance that they see something awkward happening. Maybe someone's being coerced, we talked about the sweetheart scams. Or someone who is perhaps coming in for multiple sums of money in the same day or within a few days and is confused about who they're giving the money to. There are many examples and I guess what we're looking for is whether there is anyway to put some teeth in it so the banks would have some liability. Have some responsibility with being held to no harm. They see everything.

State Assemblyman Joe Simitian, Chair:

Yes. We had, I thought, very helpful testimony on this particular piece of the issue at the hearing held in San Jose. And as your comments suggest, the politics around adding to the list of mandatory reporters with respect to financial abuse, has proven difficult in previous sessions. One of the things we talked about is who might be appropriately and helpfully identified as mandatory reporters. There was a whole range of folks in the financial transactions world. The issue of notaries came up only briefly, folks who work in title companies, banks, mortgages, and the other option that was discussed was the possibility of indicating certain folks fell into a different category, like the permitted reporters. They would, perhaps, not be mandated to report, but would be permitted to report with some protections from liability because one of the arguments people make against being included as reporters is they'll bear some liability if they violate the confidentiality or privacy of the parties involved. So, that's an area that we will be pursuing in terms of the Committee's discussions about legislative possibilities growing out of the hearing. So thank you. Yes, Mr. Cole.

Prescott Cole:

I'd like to make a comment about that if I might. Since deregulation, many people don't realize that there are individuals who are in banks in an employee setting who are actually not what the bank customer would think of as a bank employee. They're actually insurance sales people. And they're licensed to sell insurance, under the guise of being estate-planning advisors.

They're getting access to the customers' information and there are instances where an individual will get a call at home saying, "Mr. Cole I understand your CDs just got ready to come due, why don't you come down to the bank and we'll talk about maybe getting a little extra. The CD you had is 2%, there's other kinds..." They're selling annuities. Just as the people who go door-to-door, people that

put on the trust seminars. They're there. I think, it would be a fight, but I think that the Legislature might want to consider that in the bank, at the desk, there should be some kind of disclaimer or a notification that says, "I am a licensed insurance agent and my primary function is as an insurance agent. I am not affiliated with the bank as a bank employee."

State Assemblyman Joe Simitian, Chair:

Thank you. Any other comments? Ms. Skezas?

Sandy Skezas:

The bank must benefit from having them sit there.

Prescott Cole:

In fact, the person you mentioned out in Marin, it's these bank companies who also own insurance companies now. Some of them. And so the money you think is sitting in California could be in some happy product someplace else. It's sold, and it's sold. It's part of the annuity flow. So there's two different companies. The client, the customer, should know that.

State Assemblyman Joe Simitian, Chair:

All right. Any other comments or questions? If not, I will say thank you. As I had expected we heard very helpful presentations from this panel of experts. Thank you for your participation. In a minute we're going to take a five-minute break. Before we do that, however, a couple of announcements and introductions.

The first is for members of the public who would like to comment at the third part of the agenda today under public comment. I believe we have cards you can fill out. If you will raise your hand, one of our staff members will get you a card and then we'll collect them. So just raise your hand as we go to break. If you think of a comment you'd like to make, when that time comes raise your hand during the course of the hearing and we'll simply drop off a card.

The second is by way of introduction. I do want to introduce a couple members of our staff who are here. From my District Office, Kristina Loquist. If you would raise your hand so folks can spot you. And Melissa Millsaps, if you would raise your hand so people can spot you. Thank you for your help in pulling together today's event. Mr. Laird can vouch for me on this. The work we do as Assemblymembers is only as good as the help we have from our staff. We also have two members from the Select Committee on Elder Abuse staff here with us today from Sacramento. Lark Park, if you would raise your hand, and Dena Wilson as well. Thank you both for making the journey from Sacramento.

We're going to take a five-minute break before we pull our next panelists up. I'd like to ask our next panelists to come up so we can get started in a real five minutes, not a government five minutes. So the Committee is recessed for five minutes. Again, our thanks to the panelists who participated thus far. We stand in recess.

Physical Abuse Panel: Problems and Solutions

State Assemblyman Joe Simitian, Chair:

Thank you very much. We are now at the second portion of the Select Committee on Elder Abuse hearing today in Santa Cruz, California. The hearing, as you know, is titled Next Steps for California. We are about to hear from a panel of experts on the issue of physical abuse, not only identification of the problems, but we're looking for solutions as well, as you saw with our previous panelists.

Before I introduce them I should mention that we did have a comment from Richard Parker that he left behind, relative to the last panel we had. He could not stay for comments at the end, but just for the record, his comments have been received and will be considered part of the committee's deliberations.

That brings us then to our next panel. Thank you to the four panelists who are here today. We have I think four very well qualified folks to share their insights and recommendations with us. I will allow each of them to introduce themselves briefly so both the public and members of the Committee and their staff who have an opportunity to review the hearing today will have a sense of what it is that informs your position and point of view.

Why don't we go ahead and go in this order if we may. I think I'd like to hear from Kathleen Johnson, to be followed by Detective Sergeant Donna Lind, to be followed by Brian Frankel and finally from Joseph Fendrick. So we can go in that order. Let me ask that we hear first from Ms. Johnson, if you'd introduce yourself. We'll then go to Detective Sergeant Donna Lind.

Kathleen Johnson:

Thank you very much Assemblyman Simitian and Assemblyman Laird for allowing us to be here and offering the opportunity. I am Executive Director of Ombudsman Advocate, an independent non-profit agency within the community that serves Santa Cruz and San Benito County. We house the Long-Term Care Ombudsman Program as well as the Patients Rights Advocate Program. Prior to that, I was the Long-Term Care Ombudsman Program Coordinator for both Counties for two and a half years.

The Ombudsman has been raised earlier in the financial hearing. It's responsible for all abuse investigation that occurs in licensed facilities. Licensed facilities include skilled nursing facilities, residential care facilities, daycare health facilities, as well as developmentally disabled homes. As such, it's been talked about how best to prevent physical abuse from our local perspective, and what we're

seeing. And Donna and I decided that we would split it between facilities and community. So I want to speak to you specifically about facilities, what our Ombudsmen have found, and the needs that exist.

I think it's important for all of us to remind ourselves what physical abuse in fact is. And, it is obviously any harm physically that is perpetrated upon an elder or a dependent adult. Harm is an unusual kind of term, and often people look for bruises. However, physical abuse also includes neglect. It includes sexual abuse, which happens for elders and dependent adults and often is not talked about as such. It includes isolation and abandonment. All can be a part of physical abuse because each leads to some sort of physical harm.

Within the facility setting, just locally so you're aware, there are 41 residential care facilities in both counties, as well as 14 skilled nursing facilities. The Long-Term Care Ombudsman Program has investigated 109 physical and neglect allegations in facilities between January and November of this year. That gives you an idea. And these, I must say, are primarily the ones that are reported. Often they are not reported, which is one of the problems. As was raised earlier, but needs to be restated, especially within facility settings.

Mandated reporters by law include physicians and all medical providers, all employees of facilities, whatever setting that might be. Clergy is required to report and have access to that information frequently. Any person who assumes the responsibility for the care or custody of an elder or dependent adult is a mandated reporter.

When I was coming up with ideas that needed to be presented here, I have to admit that when I started listing problems, the problems were into the teens and obviously eight minutes does not allow us to do that. So I've tried to focus on those that could be addressed from the beginning. What could be done initially with the idea that abuse can be prevented.

In looking at the problems, one of the things is a lack of importance, I feel, that is placed on the value of care. And I am speaking legislatively both federal and state. The fact that studies are conducted, reports are made, they are publicized, and unfortunately are shelved. It's a problem, and we have seen numerous reports over the last six years about the condition of skilled nursing facilities, the financial difficulties as well as abuse that occurs. And it's something that is very disturbing, I think, for all of us to see the data collected and put on the shelf with no action to follow.

One of the things I feel would be very helpful, and maybe it isn't legislative, but the very fact that facility life is kind of broken into business versus home, and from the residents' perspective in many cases it is their home for a very long time. The short period of time (that many stay in nursing homes) that was discussed in the financial abuse panel is true. The fact is that 1 out of every 3 of us will spend some time in a skilled nursing facility. And we have residents in our facilities who have not gone there to die. They have been living in facilities for 6, 8, 14 years. This is their home. And this is a problem that I believe can be addressed, and I will look at that later in terms of suggested solutions.

It is their home, yet it is a business, and there is a reality and a perception that are not the same when talking about residents' homes and the responsibilities of an owner and administrator. There are also laws and regulations that are in place to protect residents of all long-term care facilities. Those laws and rights, the rights they hold are in addition to the rights they carry with them into the facilities that each of us enjoys in our lives.

However, while the laws are enacted, and specifically talking about elder abuse, all the requirements for the facilities, the way to look at preventing facility abuse is certainly through education of staff. Having the required number of staff per resident. Again, all of these things are very good and in place, but it ends up pitting facility owner and administrator almost against the residents in that they're trying to meet regulation requirements. The funding is very difficult for them. They are unable to have the staffing level, especially in our area, as you well know the cost of living is extremely high. The ratio of staff to resident is increasing.

Staff members, specifically Certified Nursing Assistants, provide at least 85% of the direct care to all residents. And in order for those individuals to make a living in our community and live in our community, they're working two or three jobs. Which we can all now check off the possibilities of what's going to cause possible abuse within a facility. I know it's awful to say, but the laws have been enacted, the regulations have been enacted with very well intentions, but without recognition of dollars and cents. And unfortunately, where it's a home environment for residents, it's also a business, and it has to equitable and acknowledged where dollars and cents are involved.

I'm not saying that we need to have more money, but perhaps looking at the way that funds are spent going back to studies, data collection, various reports and efforts that are undertaken. Perhaps at this point the money spent to do those reports, which we all know is somewhat costly, could now be redirected to assist in providing the staffing levels to make the operators feel it's beneficial to them and not put residents at risk because of the fact that staff is overworked, underpaid.

I'd like to talk about regulatory agencies as well, and I'll do this very quickly. Abuse investigation within a facility is so multi-layered, which is absolutely important to the facility and really of benefit to the residents and staff to have the multi layers. The problem, and when I say this to people, understand by law what is supposed to happen is where there is an allegation of alleged or suspected abuse in a facility, the way it is supposed to go is that the individual who is a mandated reporter is to report to either the ombudsman or law enforcement immediately or as a soon as possible after they hear of the event. Within two days we are to have a written report. What happens then is the Ombudsman does an investigation. The administration is to do an investigation. We cross report to the Department of Health Services or to Community Care Licensing which are actually licensing agencies for residential care and skilled nursing facilities. And we, the Ombudsman, also cross report to the Attorney General's Office in Medi-Cal Fraud and Elder Abuse.

Multi layers, not everyone goes into investigate, but it is all out there in the public. There is very little consistency that exists in the licensing agencies in their investigation. One evaluator may come in and look at a case and find that it's unsubstantiated. What happens at that point is, and this is from our

perspective, we then call our Regional Director, we write letters, we send up every piece of information and ask that it be reopened. It may be reopened. Another evaluator goes in and comes up with a deficiency or citation. So it raises the question of what is the training, what is the requirement and what are evaluators instructed to do so that residents can feel secure that they are getting the attention they need. And so the facility owners can know the standard that is expected of them.

Consistency always provides a sense of security to residents. It also ensures the administrator knows what's required by law and what standard they will be held to.

In addition to the reporting process to the Department of Health Services and Community Care Licensing, once there has been an investigation and a regulatory agency makes their findings, the facility is required to put in place a correction plan. That is, the purpose being that any regulation that was violated is covered so it doesn't happen again. The second thing is, in the case of abuse, that that individual will be kept safe and that all of the residents will not need to be fearful within the facility. The plan of correction is submitted to the Department of Health Services and they sign off on it.

Often, and when I say often I will say 90% of the time, a plan of correction that comes from a facility is exactly the same plan of correction they had prior to, for the same offense. When the staff person who is being accused of abuse is in an administrative role, for instance a director of nursing or an administrator who is unresponsive to elder abuse cases, the plan of correction contains a provision that that individual is responsible to ensure abuse does not happen. That person is responsible to provide in-services on abuse to the staff. It's signed off by the Department of Health Services and there is no oversight by the Department of Health Services. The response is we expect the Ombudsman Program to be our eyes and ears. And we constantly try to remind them, as well as every other agency, as well as community members, that we are not a branch of the Department of Health Services. That is something that is very important. Something to look at.

Training needs to be involved. Elder abuse needs to be a part of training on every level in the medical profession, from physician all the way through to CNAs. It needs to be a required course. It needs to be required in continuing education. And it needs to be provided by those who know what it is and what to look for, what the indicators are. The accountability of mandated reporters is essential. It is a preventative act that we believe that if in fact, as was talked about before, mandated reporters who fail to report are prosecuted regardless of what their role is in the community. That it sends a message to the community and every facility owner, every staff person in a facility, if you don't report, you will be prosecuted and you will be prosecuted the fullest extent the law allows.

State Assemblyman Joe Simitian, Chair:

Forgive the interruption, but do you have any views about expanding a list of mandated reporters and whether that would be appropriate?

Kathleen Johnson:

I do, and yes I do feel that we should expand. Financial abuse really got me where I couldn't say anything, but I absolutely agree banks should be involved. I also believe that social workers, case managers, who are working with seniors or dependent adults should be mandated reporters.

State Assemblyman Joe Simitian, Chair:

Thank you.

Kathleen Johnson:

Again, my list was long and I know I'm running over so I'm going to make this as short as possible. The one thing I can say from our perspective, where I've been and where I am now, both the federal government and state government through the Older Americans Act and the Older Californians Act created the Long-Term Care Ombudsman Program for the specific purpose of advocating for and protecting the rights of those residents. And there is no other program that exists like it, that is responsible for that. It is also the only agency that's responsible, aside from law enforcement, for all of these investigations into facilities. Again, I realize that money is tight. But it is also questionable not only to those who dedicate themselves to this profession, and it is a profession, but the need, the importance and the priority, needs once again to be backed up with finances to adequately finance an Ombudsman Program throughout the state. A program that allows for paid staff as well as the volunteers who are able to be trained and work within this field.

State Assemblyman Joe Simitian, Chair:

Thank you. And to the extent you have additional comments, we can incorporate them into the record in writing so not to worry, they will be included.

Kathleen Johnson:

One more thing?

State Assemblyman Joe Simitian, Chair:

Absolutely.

Kathleen Johnson:

This is essential, and I promise I will stop here. With the Ombudsman Program and the responsibility that the Long-Term Care State Ombudsman is supposed to have, because there are so many regulations that are state connected and because the purpose of the program is to act as advocate in rights protection for residents, I think it would go well for our Legislature to look at removing the State Long-Term Care Ombudsman as an administration appointed position. And by doing so, allow the State Ombudsman to be independent, not under the same agency that the Department of Health

Services is under. Make it totally independent as is the Commission on Aging. And allow the residents the same playing field that lawmakers and lobbyists are playing on. Let the State Long-Term Ombudsman be an advocate for the residents of this state.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments. Thank you very much. If we could hear from Detective Sergeant Donna Lind please.

Detective Sergeant Donna Lind:

Yes. I am with Scotts Valley Police Department. Detective Sergeant. I've been employed with this city for 35 years, a Peace Officer for over 25 years, and an investigator for probably 15 of those years. And, during the course of my investigations, my work in investigations, there have been very few reports of physical abuse.

I would like to add one more thing. My mom was president of Project Scout which also worked with seniors, and often she would come to me with issues and problems, and things of that nature, and a concern about the lack of resources for elders.

Through the years, in the area of physical abuse, we see very few reports, especially in Scotts Valley, and I think county-wide. And part of that I believe is because the elder person is isolated and the perpetrator is usually a family member or primary caregiver. They feel a sense of guilt for being a burden on whoever's the caregiver, and maybe feel that because of their inability to contribute they deserve what happened, and there's a lot of psychological things going on. Things that result in a failure to report.

Some live in fear of being removed from their home, and better to be in their home where they're comfortable, even if they are abused or neglected, than to have to be placed in a nursing home, which they're often threatened with. And, those people who might become aware, neighbors, friends, although often they're more isolated if there is abuse, are afraid to come forward for fear of retaliation. They live in the neighborhood. They don't want to put up with a person when they assume law enforcement will come out, you know, guns drawn, NYPD Blue or something, and hit the house. They envision an investigation as very traumatic for the neighborhood, to the victim, and that their name will be revealed. There are confidentiality laws and procedures in investigations that law enforcement does handle this type of case discreetly, but I don't think people realize that.

There's often times when someone will call and give you the hypothetical case and you realize that they're afraid of becoming involved. You try to educate them on what can be done and the protection they can receive. The medical profession, I think, often doesn't want to be involved in the court system, and we all know how that can be difficult. There's a lot of time involved, delays and things. Often I think maybe it's that they're busy and not looking beyond the injury. Not taking the time to check records for past reports. I think often the caregivers who are abusive shop for doctors so they don't

take the person to the same doctor. And, you know, maybe there's also some lack of awareness, although there's been a lot of effort made to educate the medical profession, particularly, about mandated reporting laws.

So the solutions that I can see, and some of them are very difficult, is a public awareness campaign. First for the public to understand or recognize abuse. Realize that people aren't going to be forthcoming with what happened. There are the fears we discussed. But if they understand and recognize some of the indicators of abuse and procedures, and know that these concerns can be reported discreetly and confidentially and they know how to report, maybe more people will feel safe in reporting.

Next has already been mentioned, Kathleen said, more training in the medical profession on indicators and recognition of abuse. All elder abuse, physical and sexual. There's not enough training to understand the dynamics of abuse. And, we've improved in, I think, child abuse, but I think children are in schools and have more people that can be aware of abuse. But in the elder population there's not been that improvement. So we rely on the medical profession heavily and on caregivers, social workers. And as has been mentioned, I believe the bank records on financial abuse are important, I've dealt with that many times. Many times bank officials want to tell law enforcement, but they're afraid of the consequences or betraying confidentiality laws. So that has definitely been a problem. And they sometimes, I mean, there are times when they are also aware of not only financial but neglect and other issues as well. And don't know how to report.

We hope that people will understand victims won't be honest about their injuries. To look for the caregiver that is doing all the talking, the demeanor of the injured person. Are they looking to that caregiver that's standing there listening to every word they share with the doctor, before they answer? You know. Typically we're told, "Oh, they bruise easily." And yes, older persons sometimes bruise easily, but when you start hearing that, you need to look a little closer. Do the injuries match the explanation? We so often are told, "I fell. I'm clumsy. I lost my balance." But there are two black eyes or there are injuries to both sides of the body or front and back that are not consistent with a fall. And, the you know, we need to ask that the medical profession or the people of contact look beyond that one injury and look for some of the indicators and look for a pattern and encourage them to report.

The other part, I can't remember a case where someone failed to report and there was a prosecution. I know that our court systems are overworked, but maybe if that message was sent. If someone failed to report and there were really consequences and they were held accountable, word will travel through the medical profession and the other areas that really don't want to be involved. And that employees who do report, because I have seen people who've been encouraged by their supervisors not to report, are protected. All of us need to work to get that message out – that if you fail to report, you will be accountable.

The other end is the prosecution. In law enforcement it's typical that all cases take quite a bit of time to go through the court system. I know the problems financially in staffing and things, but working with elder victims, there are so many times I've seen cases that are so drug out. In one case, before we were allowed to videotape, they brought the whole jury, and we all went to this lady's mobile home. Well, the

time it took to go to court, dementia had set in, she didn't recall the specifics. But think of her bedroom. Her being in bed and a full jury and the attorneys and the law enforcement all there. The stress she must have felt. And that case was lost.

Now we can videotape, and that's been a tremendous tool, but you still want to see that victim see that justice. And the delays and the things that happen make these cases even more difficult to prosecute than other cases because there are so few people that can speak for them (the elder). And I guess those are my main issues.

State Assemblyman Joe Simitian, Chair:

Thank you very much. That brings us to our next panelist which is Brian Frankel. Mr. Frankel, welcome and thank you for being with us today.

Brian Frankel:

Thank you. My colleague Joseph Fendrick and I will each be interacting with each other when giving the presentation so we may switch back and forth for our allotted time, our combined allotted time.

State Assemblyman Joe Simitian, Chair:

Happy to accommodate the presentation and any way you feel is most effective.

Joeseeph Fendrick:

He's Frick; I'm Frack.

State Assemblyman Joe Simitian, Chair:

We'll be the judge of that gentlemen.

Brian Frankel:

Okay. Let me first introduce myself. My name is Brian Frankel. I'm a Supervising Deputy Attorney General. I supervise the legal staff in the Elder Abuse Prosecution Unit within the Attorney General's Office. And that Unit is housed within the Bureau of Medi-Cal Fraud and Elder Abuse.

Joseph Fendrick:

My name is Joseph Fendrick, I'm a Special agent supervisor with the Bureau of Medi-Cal Fraud and Elder Abuse. I supervise a team of agents that are assigned to the facility enforcement team, which has statewide jurisdiction. It is one prong of the four-pronged approach that our Bureau has in investigating and prosecuting crimes against the elderly and dependent adults here in the state of California.

State Assemblyman John Laird, 27th District:

And Mr. Fendrick, where did you go to college?

Joseph Fendrick:

I graduated from the University of California here in Santa Cruz.

State Assemblyman John Laird, 27th District:

Just checking.

Joseph Fendrick:

If I may,...

State Assemblyman Joe Simitian, Chair:

We're going to ask the Sergeant if she can cite for shamelessness in just a minute...just so we're clear about this. Go ahead Mr. Fendrick.

Joseph Fendrick:

I have one other comment. There are several people here in the audience, important people in my life. My mom and dad, my mother and father-in-law and my brother are here. I would not have had the privilege of sitting this chair today without their love and support, so thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much and welcome. Thank you for being with us. Go right ahead with your presentation.

Brian Frankel:

I would like to thank the Committee for taking the time to address this important issue, and thank you for the panelists and the people in the audience for taking time to be here. I'd like to state that throughout our presentation we will be making various proposals and some of them may be our own personal opinions, some of them we've heard from opponents, people in the nursing home industry, various sources. So I don't take credit for all of them, and some of them may not have been passed up the chain of command with the Department of Justice/Attorney General's Office. But we wanted to communicate these ideas to you because we feel that it's important. It's our duty to let you decide what you want to follow up on.

State Assemblyman Joe Simitian, Chair:

Thank you. Understood and appreciated.

Brian Frankel:

First, we're going to briefly address what our Office does so you understand the perspective that we bring to the table here, and then we'll get into the problems and solutions. Our authority over elder abuse cases is in healthcare facilities which receive Medi-Cal funding. It doesn't matter whether the victim himself or herself is a Medi-Cal beneficiary, as long as that victim is within a facility that receives Medi-Cal funding for any reason.

We also have authority over board and care facilities, which are known in California as residential care facilities for the elderly. Those are homes in which there are two or more unrelated adults receiving either nursing services or a substantial amount of personal care services to assist in the activities of daily living, such as bathing, eating, getting dressed, things like that.

I'm going to let Joe take over and talk about our organization a little bit.

Joseph Fendrick:

If I can go back to the four-pronged approach, there are several different areas of focus within the Department of Justice, within our Bureau. The first is the violent crimes unit. There are agents assigned to investigate allegations of individual incidents such as have been mentioned earlier today. Crimes against elderly or dependent adults within skilled nursing facilities, where we're talking about an isolated incident, where there might be sexual assault, a battery, or any other incident where we have a defined specific individual, maybe one or two, just depends on the case, suspects. Those cases are investigated and prosecuted not only by our Bureau, but we work in conjunction with local law enforcement agencies, with the local DA's offices throughout the state. There are many of our cases that we actually refer and are prosecuted by the local DA's office.

The Facility Enforcement Team, which is a Team that I supervise, looks at the broader picture. We look at investigating the allegations of neglect or substandard care within companies or corporations who own and operate numerous skilled nursing facilities throughout the state. There, the investigations can culminate in either civil and/or criminal actions taken against the company or corporation.

It is in these instances where the 17200 type of filings have been, I think, somewhat successful. In that particular Business and Profession Code it has the prohibitive, the injunctive relief segment of that civil filing. It has an effect of almost putting a company or corporation somewhat on probation because there is the prohibitive aspect of what they should not be doing, not violating any laws, or the regulations that they should have been complying with to begin with. And there is an affirmative portion of the injunction, which by court order mandates them to provide additional training, put additional funds, as Kathleen

Johnson was talking about, the dollars and cents of running a business, hopefully putting that towards where it makes a significant difference in the every day life of the residents in the facilities.

The third prong is Operation Guardian. It is a program started by the Department of Justice a couple of years ago, in 1999. Operation Guardian is a multi-agency task force, which does surprise inspections that are much more focused, and are a little bit more random, than what the local licensing and certification agency does on an annual or semi-annual basis. Their goal is to go into facilities and hopefully identify potential violations or areas where the facility needs to be doing a better job, if they haven't been made aware of a particular situation by a nurse evaluator, by the ombudsman, or someone else who is in the facility as an advocate or as the oversight agency. Operation Guardian does that and works with the facility owners and the director of nursing and administrators to hopefully correct those situations.

The fourth prong goes back to the financial abuse panel. The first panel. We do have investigative auditors and agents who, within our Bureau, look at and investigate crimes that deal with allegations of financial abuse against the elderly. And in all of those we do try to incorporate a continued commitment to work with local law enforcement as well as the ombudsman, licensing and certification and local law enforcement agencies.

State Assemblyman Joe Simitian, Chair:

I apologize. The second prong, your shorthand for that was?

Joseph Fendrick:

Facility enforcement team. If you want the acronym, it's known as the FET team.

State Assemblyman Joe Simitian, Chair:

Cleverly enough. And the fourth prong, again the shorthand for that is?

Joseph Fendrick:

Actually it's just considered the Financial Abuse Section of the Elder Abuse Prosecution Unit. Within our Bureau there's Medi-Cal Fraud which investigates crimes potentially committed by providers of Medi-Cal. Then there's the Elder Abuse Section.

State Assemblyman Joe Simitian, Chair:

Thank you.

Brian Frankel:

One of the problems that we wanted to mention which has already been mentioned is the increased number of cases generally speaking, which we all know exists, and the unknown cases, the lack of reporting that exists. And Joe do you want to address that first and then I'll get into the actual lack of reporting.

Joseph Fendrick:

Sure. Although Kathleen spoke about the many studies that are made and then shelved, there are statistics out there I'm going to quote from just briefly. And one of them comes from, there are several studies, one of which concludes there are nearly 200,000 Californians a year that are victims of elder abuse. Our Agency alone, not including what other local law enforcement agencies receive, we received over 1800 referrals of suspected allegations of abuse against elderly and dependent adults. Within the last four years our Bureau has doubled in size. In doubling that size, although it sounds great, which it is, please don't get me wrong, we have 24 agents for the entire state, six investigative auditors and five attorneys, and we have a few more that are being assigned to specifically investigate and prosecute these cases.

So if I can make, I think everyone is aware of the financial crisis this state is in today, we as representatives from our Bureau need to put forward that if there is a way to preserve the positions that we have, keep what we have, it is important. If there is a way to increase it, I'm not sure if that's possible. If it is, that is certainly an area where it should be explored even in a fiscal crisis. Simply because of the impact our cases have on people's individual lives within the skilled nursing facilities, and in society as a whole.

Brian Frankel:

One of the things that we're trying to do to increase awareness of elder abuse is the media campaign. You see examples of it with the posters I'm glad to see on the back wall here which the Department of Justice was involved in developing. That's a three-year program that started up this last year. We also have the Citizen's Guide here. We have copies on the side there for distribution, looks like this. There's a Citizen's Guide to Preventing and Reporting Elder Abuse, and I believe we also have some Spanish copies here also. We've done that in conjunction with AARP.

So we're trying to get the word out and I think it's important. That's what I've been hearing here all afternoon. That it's important to make people aware of what is elder abuse, to identify it and also to report it, and that's something I want to focus on now.

DOJ is mandated by statute to provide training materials to long-term care facilities and we have done that within the past year, videotape and some hard copies of materials to educate staff in nursing homes and other facilities as to what is abuse and when to report it.

Regarding the prosecution of mandated reporters who don't comply with the law, Prescott Cole mentioned a case that's being prosecuted by the Attorney General's Office, I'm the prosecutor on that

case and it's up on appeal now. We're hoping the Court of Appeal will issue a published decision that will provide guidance to both prosecutors and mandated reporters in the nursing home industry and other mandated reporters, so we know when exactly mandated reporters should make those reports.

Some of the solutions I'd like to see having worked on this issue of mandated reporting is that the statute that deals with mandated reporting, and the main statute is Welfare and Institutions Code 15630, makes it a crime not to comply with the mandated reporting laws. It also states in that law that something to the effect that a supervisor or employer shall not impede or prohibit one of their staff people from making a mandated report.

And yet, that statute does not make that a crime. To impede or prohibit the reporting. So you could have a supervisor, a director of nursing or administrator of a nursing home who directly or indirectly is stopping the staff people from making reports. For instance, they may tell the staff people, "Do not report directly to the outside agency." They're supposed to report to the ombudsman or local law enforcement. The administrator may say, "I'll take care of reporting it." The administrator may be acting as a screen or filter and not reporting things out, because if that abuse were known the nursing home may get hit with a deficiency or citation by the Department of Health Services.

State Assemblyman Joe Simitian, Chair:

As I understand your comment, the Code section states a prohibition against impeding or preventing, but effectively provides no remedy or means for enforcement of the language, is that correct?

Brian Frankel:

Correct. The subsection that imposes the actual criminal sentence refers to not reporting in compliance with that statute but it does not make it a crime to impede or prohibit the reporting. So that's something I'd like to see changed.

Also, there are some laws that have a statute of limitations or deadline for when a criminal complaint can be filed. And certain crimes begin that time period to file after discovery of the crime. By the nature of the crime, this type of crime is hidden. Like financial fraud would be a good example. In cases where (knowledge of) the crime doesn't necessarily start on the date the crime was committed, I'd like to see the statute of limitation change to account for the lack of reporting. Because by the very nature of the crime, the law enforcement needs to know about it to file charges, but may not know until too late. So I'd like to apply the date of discovery to the statute of limitations that applies to the prosecutions for mandated reporting.

Another problem that I'd like to address, and I see this as a huge problem that has a great impact on at least the nursing home industry that I deal primarily with, is the lack of staffing. There is a requirement imposed on nursing homes that each day there has to be an average of at least 3.2 hours of nursing staff care provided per patient per day. One of the issues that needs to be looked at is what is adequate staffing, and is 3.2 adequate? Should there be more nursing staffing supplied for the patients. Some

other states have less staffing, have lower requirements, but many advocates say that higher requirements are necessary to provide the quality of care that should be provided.

In a lot of visits we've done to nursing homes, the nursing homes are not complying with the staffing requirement. This is something my office is going to look into through the use of, for instance the use of 17200 actions, trying to get injunctive relief to make the nursing home comply with that staffing requirement.

I've seen many reports, and the experts seem to be all in agreement that the amount of staffing has a direct impact on the quality of care being provided, and that makes sense. Obviously if there are not enough staff to go around to take care of all the patients in the nursing home, if somebody who's laid up in bed and can't take care of himself, they ring the call bell, if they don't have staff people coming to help them to get them water or to help them feed, or to help them to the bathroom, that's a problem. So that is a very big issue and I think my perspective is if you focus on the staffing issue, as a side result, a lot of the quality of care issues will fall into place. So that seems to be something that's an important issue to focus on.

Maybe some incentives that can be done to have the industry meet that standard of the 3.2, the present nursing staff ratio, maybe reductions in insurance premiums. (If more staff is available to take care of residents, the quality of care being provided to residents will be better. Therefore, less complaints and insurance claims will be filed and the amounts of settlements paid under insurance policies will decrease. Thus, insurance companies should offer a tiered level of reductions in the insurance premiums being paid by skilled nursing facilities as the facilities provide more and more staff over and above the bare minimum of 3.2 nursing hours per patient per day. If the facilities provide more staffing, the facilities will benefit from reduced premiums, the insurance companies will benefit from less claims being paid out, and the residents will benefit from better care being provided.)

By the way, some of the things I'll mention may not be directly in the hands of the Legislature, but (my goal is) to bring to the forefront things that can be done.

State Assemblyman Joe Simitian, Chair:

There's very little we don't think we're in charge of. So it's okay, go right ahead.

Brian Frankel:

Sometimes we have an influence on what can be done with other organizations. Tax incentives possibly. Subsidized training. A lot of what I hear from the nursing home industry is that they keep on advertising, well this seems to be true, they keep on advertising for staff and there are not enough staff to go around to fill all the positions. In fact, one I think it was an administrator, mentioned to me a few weeks ago that they did a reference check and this prospective employee had bad references from a prior nursing home, but they hired the person anyway because they needed somebody to fill the position. They had

to have the staff. So we need better qualified staff. So maybe scholarships or grants or low interest loans to people filling positions as Certified Nursing Assistants and people working in nursing homes. Get more people and better-qualified people into the homes.

Joseph Fendrick:

If I could just add a quick comment. I think it's important to see if there is that dual administration of the nursing standard instead of the approach being penalizing by deficiency or citation those facilities that don't meet that standard. Offer them incentives for meeting the standard. Just like Kathleen said earlier; it's a dollars and cents game. If it becomes beneficial, and I'm not sure what the magical answer to this is. But if the approach is to offer incentives to the companies, to the corporations, to meet the standard, they have this other incentive that benefits their company more and more. The better they can provide, or the more they can provide more qualified staff to give the care to the residents. I think that's certainly what the approach is in many different industries, and I think it's something that should be considered. Because certainly the work that they do is incredible, especially in the responsibility that comes with the work that they do. It is so important. It needs to be looked at.

Brian Frankel:

One idea that was proposed to me was that if you know how restaurants have a notice posted with the letter A or B showing their rating for health. Somebody suggested that similar ratings can be used and posted in the lobbies of nursing homes. So for instance, somebody suggested that be done for the general level of quality of care being provided. Somebody suggested there's a notice posted saying the 3.2 nursing staff ratio is required and here's what the actual ratio is, you know, 2.8, 3.1, whatever. So that people coming into the facility thinking about whether to place their loved ones there will know whether the facility is supplying the required level of staff there.

State Assemblyman Joe Simitian, Chair:

I just want to apologize, I didn't mean to chuckle at the suggestion, but I was the author of the proposal to require what's known as placarding at restaurants when I was a Santa Clara County Supervisor. So it brought back memories of some rigorous debates on the subject. Ultimately we ended up going with online posting of health inspections. It wasn't my first choice, but it was better than nothing at all. That's another possibility as well. Thank you, keep going.

Joseph Fendrick:

I mentioned earlier, I'm kind of throwing different things in out of order, but as they come up, I think it's important to include them. As far as the increase in our staffing, at the Bureau. For the limited numbers of agents and auditors and attorneys that we have working these cases, we have shown within the last four years that it has an affect, not only in the individual cases that were filed and what that says within the industry, but the larger cases, the larger corporate cases. They do send a message, a clear message, I think. That law enforcement and the other agencies that we work with, because none of these cases

are done in a vacuum, are really paying attention to what type of care, what the standard of care is that is being provided in the different facilities throughout the state.

There is a program from the Governor's Office of Criminal Justice Planning. If there's any way the Committee can make sure that grants for vertical prosecution units to prosecute elder abuse cases can be maintained, if that is possible or supplemented somehow. Because I know some local agencies unfortunately have lost some of their programs, some of their funding for investigating and prosecuting this type of case.

Brian Frankel:

And those are grants given to district attorney's offices for prosecuting elder abuse. One of the things I want to point out, for our Office, for the Bureau of Medi-Cal Fraud and Elder Abuse, our funding is 25% from the state's General Fund and 75% from the federal government, so for every 25 cents that the state chips in, the federal government chips in 75 cents.

State Assemblyman John Laird, 27th District:

And that's in a direct matching ratio?

Brian Frankel:

Yes. So it's a very good bargain. You get a lot of bang for your buck, the money put into our Office. I'd like to just mention in rapid fire in the time I have left, some various proposals. They don't fall within any particular category, but I want to get them out on the table for you.

One of the things that makes prosecutions difficult is when the ombudsman is restricted from disclosing confidential information. Of course federal law prohibits disclosing information unless they have the consent of the patient or by other means that may be available by court order. But to the extent that pressure can be put on the federal government to change that, to make an exception for reporting to law enforcement or if necessary restricting such disclosure to law enforcement if there's a serious risk of injury involved. But there has to be some way to get around that.

State Assemblyman Joe Simitian, Chair:

Is the federal prohibition statutory or regulatory?

Brian Frankel:

Statutory.

State Assemblyman Joe Simitian, Chair

Thank you.

Joseph Fendrick:

And that certainly has become somewhat problematic. I've heard that from several different attorneys and agents and even ombudsmen in different areas. In the different statewide training that our Bureau has done in the last four years, people have come in and certainly it is an issue that has been brought up on many different occasions.

Brian Frankel:

Somebody has suggested that in Penal Code 368, one of the requirements is that the victim is an elder. And we have to prove that the defendant knew that the victim was an elder. People have suggested making that a strict liability requirement, sort of statutory rape where it doesn't matter what the defendant thought about the age.

State Assemblyman Joe Simitian, Chair:

Would it help if there was a middle ground that was "known or should have known", if we couldn't get to a strict liability?

Brian Frankel:

Obviously anything that would help go down that path would help prosecutions. Maybe a rebuttable presumption.

Another suggestion. Right now background checks for criminal histories are done on applicants for jobs in nursing homes. The state's database is accessed and I think there should be a requirement that the FBI criminal database is accessed for criminal histories. Somebody may have been living in another state and have a criminal record and it may not show up on the state background check.

State Assemblyman Joe Simitian, Chair:

What would the cost implications of that be?

Brian Frankel:

I don't know what the cost would be to access the FBI records. Do you have any idea?

Joseph Fendrick:

You know, I don't. We could certainly look into it, see if there's an area within our Bureau or within the state system to find out if we could put a dollar amount on it.

State Assemblyman Joe Simitian, Chair:

We'll follow up with you, thank you.

Brian Frankel:

Okay. A registry of convicted elder abusers, just like the registry of sex offenders under Penal Code 290, so that people, both facilities and employers, can check to see if there have been convictions or people in the community who are hiring people to have somebody to come into their home to take care of an elderly person or dependent adult. This is so we know the person's background if there have been convictions. Also, even if not convictions, if there's been disciplinary action against somebody.

The medical board has a website that lists disciplinary actions against doctors, if I remember correctly, and the state bar also publishing disciplinary actions against attorneys in the state bar journal. So I think it would be possible for some type of communication to the public about disciplinary actions taken against staff working in nursing homes, so facilities and people in the public will know what they're getting. I think those are the most important things I wanted to convey to you. Thank you very much.

State Assemblyman Joe Simitian, Chair:

Mr. Fendrick, anything else?

Joeseeph Fendrick:

The only other suggestion I would like to make to the Committee is in composition of the panel today. And I don't know if you plan on incorporating people from within the profession – the nurses, the directors of nurses, the people who run the businesses, the administrators to also provide you input as to where they see possible solutions, so you have their perspective as well. So it's not just the outside looking in, but it's the inside looking out. I think that would be very important for the Committee to hear as a whole. Because if I can bring it back again, it is a dollars and cents issue. That's how they're running it, and I know they're under quite a bit of, you know, their own responsibilities, obviously in making sure that it stays open, that the facilities stay open.

Thank you very much for your time, and if I could make one more comment to the public. This Guide is a very comprehensive source of information that can be used in making your decision as to whether or not and where a loved one would be placed if they need to be placed in a skilled nursing facility. There's information that identifies websites. Please help yourself to copies because we brought them for everyone to have. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much. Are there comments that panelists have made that prompted thoughts by other panelists. We're a little behind schedule, so if we could keep them brief. That would be helpful, but I don't want to cut them off. Sergeant Lind?

Detective Sergeant Donna Lind:

I'm not sure if I mentioned in prosecution of elder abuse, specialized training for investigators and prosecutors in recognizing, understanding the psychology of dementia. They're a different type of case to work. And, the importance of that. And I too agree with prohibiting persons that are convicted of any elder abuse associated or related offense. Not just 368. I've seen cases where someone's been convicted and then I had a case where he showed up in another senior mobile home park living with an elder person who would not believe there was any risk. And, it was very difficult to help her. If that had been a condition when he was convicted, it would've been a great tool to protect future victims.

State Assemblyman Joe Simitian, Chair:

Others?

Kathleen Johnson:

I'd just like to comment, they did such a great job, but it caused me to think, when we talked about the question of there being some kind of penalty or something associated with preventing or inhibiting or impeding reporting. To take it a step further, I'd like to see what could happen in terms of the same kind of thing occurring when there is intimidation, threats or fear coming within a facility towards a resident. And staff as well, for fear of retaliation should they report.

The second, the only other thing is that when dealing with abuse in facilities, often it's an unknown perpetrator. This is something you guys made me think about. And even if there's a known perpetrator, you may not find it out. I'm not sure exactly how to work it, how to do it or if it exists in the law. But when there's a pattern or when occurrences occur within a facility, where more than one abuse report that occurs, there needs to be a higher standard, or at least someone who can be held accountable and be under the law to answer to that, both civilly and criminally, and regulatorily I guess.

State Assemblyman Joe Simitian, Chair:

Thank you. Mr. Laird, comments or questions at this moment?

State Assemblyman John Laird, 27th District:

I have a comment. I think they're finished, and I apologize because I will have to leave just a little bit into the public comment section. Since I've been admonished by the Chair already for being shameless, I'm going to do it again.

State Assemblyman Joe Simitian, Chair:

You were being complimented, not admonished.

State Assemblyman John Laird, 27th District:

And that is we've been carefully, during this entire hearing, dancing around the key issue, and the key issue is the state budget. And I thought that I just wanted to make the point for everybody that's here, as well as the panelists, that the state budget is an elder abuse issue. Our ability to deal with this is going to depend on a number of things that are related to it.

Mr. Fendrick talked about increased enforcement and the desire for that, and positions. That's going to be directly related to our ability to fund the state budget. Mr. Frankel talked about adequate staffing, and while adequate staffing at skilled nursing facilities might well be an issue of a private facility, if there are any Medi-Cal beds there, then that will be something that reverberates back around to Medi-Cal and the ability of Medi-Cal to fund that. And if we do have an increased ratio and it somehow leads to increased costs being passed on to Medi-Cal, that may well occur at a time there's a retrenchment of Medi-Cal causing people to be pushed out of the system.

And I know earlier in the first panel, we had a discussion of Medi-Cal and we had discussion of Adult Protective Services positions being cut be roughly 40%. And all of these are before there is the problem of a \$14 billion deficit at the state being addressed. And the \$14 billion, if it's addressed in cuts, is going to be absolutely catastrophic to our ability to deal with this issue.

This last week we had big discussions at the state level about a bond and a potential spending cap. That spending cap is very relevant to each one of these problems. It's a proposal that, at least the two of us sitting here did not support, that came in front of the Legislature and would have required that we make the \$14 billion of cuts and then lock that in as the state's spending level, only to be increased by a factor of population. There's already been a 5% Medi-Cal cut in July and the Governor has proposed a 10% Medi-Cal cut now. And even if we adopted that as part of the Governor's proposals, we still have \$10-12 billion of cuts to go. And then there's a proposal to lock that spending level in so that you lock the spending level in at the most cataclysmic economic downturn since the Great Depression and are not allowed to come back when the times are better.

And so I think that even though we really want to focus on the issues of elder abuse, we cannot separate them from this discussion of the budget. And I think one of the very important things that's happened just in the last few days, when we had the Santa Cruz City Legislative meeting two days ago, which was focused on the vehicle license fee and the ability of the city and county to do its basic services. There were many representatives from the community and people representing people that are developmentally disabled. We shouldn't have to make a choice. Everybody is in this together and it's time to tell the story about what happens in every level of government and public services, so it is not this faceless thing or cliché about bloat.

It's a fundamental decision about whether we will be able to protect our elders from abuse, abuse that's been so vividly described in this hearing. And so just for that moment, I want to alert everybody to that. It's related to everything we've been talking about, and I really hope that there will be advocacy related to it.

And I also, when I spoke to the executive directors of agencies that are in the human care alliance, I indicated in your advocacy you should be pulled out of the room summarily if you use the words service, funding, program, or cuts, to describe this story. I think just describing what happened in some of these specific instances, and what's at stake is our ability to protect people in those instances, is the story, not the internal workings of bureaucracy or funding. So I just encourage everybody to take that to the next level in these discussions because it's really going to determine our ability to act on the recommendations and the ideas that come out of these hearings.

Public Comment

State Assemblyman Joe Simitian, Chair:

Thank you Mr. Laird. Well said. I think apart from the concerns that have been expressed by all the folks who have spoken today, the value of these discussions has been that you have helped to put a human face quite frankly, on an issue that is too often pushed to the side. We have found that to be an unanticipated benefit of holding the hearings thus far, and I expect as we hold additional hearings in other parts of the state that will continue to be the case.

What I'd like to do I think at this point, a slight change in the schedule. I think what we'll do is we'll thank our panelists, let them step away from the dais. Rather than take the scheduled 10-minute break, I think people have been very patient, many of them waiting to speak, so I'd like to skip the break. I see some nodding heads like that might be a good idea. That will also allow Mr. Laird to stay a little bit longer.

If we have your card here for comments, then we will call you in the order in which the cards were collected. And we have two places where you may speak from.

Again my thanks to the panelists, I'm going to let them stand and make their way back to the chamber. I'm going to take the cards in the order which we have them. And Bill, have you filled out a card? If I may ask, do we have one of these cards from you yet? If I could ask my staff, Ms. Millsaps, who's in the back, is going to come give you a card to fill out so we can get you into the rotation here. And there is both a microphone here at the center of the chamber, but also a microphone that someone who is seated can use when the time comes.

If I can ask you to hold off Sir until we get to your card, we've got Ms. Millsapps who's coming right this way and she will get you into our queue. We're a full service operation, we'll find you a pen and pencil as well. Budget situation hasn't gotten quite that dire.

Could I ask Clay Kempf to come up to the microphone to be heard, to be followed by Sidney Chapman, to be followed by David Bockman.

If you could get yourself ready that will help move us along more quickly. We're going to try, this wouldn't work with legislators, but we're working with a group of community folks who I think will understand respect this, we're going to use the honor system on time. We're going to ask you to be as brief and concise as you can rather than have the little lights, bells or buzzers go off while you're trying to talk. But given the number of folks who'd like to speak and the time we have left, if you can be concise it would be very much appreciated and helpful.

Welcome Mr. Kempf. Thank you for being here.

Clay Kempf:

Thank you. My, I'm here in the role of being the Executive Director of the Senior Council which is the Area Agency on Aging in Santa Cruz and San Benito Counties, so some of my comments come from that experience. First of all I just want to thank both Assemblymen for holding this hearing. I think it's really important and it's wonderful we have this opportunity. The panelists did a great job, so thanks to all of you. When we talk about this whole issue of addressing senior needs we really think about establishing a continuum of care so that individuals can live as independently and as effectively, for lack of a better word, as possible. I think that should apply to elder abuse as well. That we really need to look at a continuum of elder abuse prevention and elder abuser treatment, for lack of a better word, on how to respond to it.

So with that in mind, I think legislatively one thing that could be looked at would be creating in the Legislature a new mandate, something that is done in Santa Cruz County and done in some other regions around the state but not in all. That is to create a FAST team, a MDT (multi-discipline team) in which individuals from different backgrounds come together to address issues of elder abuse. And the reason this is important is it's often really hard to prosecute elder abuse successfully. Seniors, especially seniors with dementia, make lousy witnesses, especially if their abuser is a family member. What's going on will often disappear once a senior gets on the stand when they're testifying against a grandchild or something of that nature. So the MDT is often a way that real solutions short of prosecution can be solved.

So it's really wonderful that Santa Cruz has that. It's essential in terms of having an MDT, in terms of designating who participates. I might not be the best person to say who those players should be, but at a minimum we need folks from Adult Protective Services, from local law enforcement, and from the district attorneys office, as well as someone from ombudsman or social services. What we're seeing in some other regions is that MDTs are losing effectiveness because the district attorney's office, for example, does not send a representative, so that hole just continues to grow. They have a slot, but the participation is hit and miss. So some sort of legislative action to address that would really be helpful.

I think public education is essential. Just looking around the room, it's a little disappointing to see there's really not a lot of public elected officials here. I know Ms. Pirie was on the panel, Bob Lee is with the District Attorney's Office here and it's much to their credit, but I think if there was a similar hearing about child abuse for example, this room would be packed with public officials. And that isn't necessarily to say public officials are doing a bad job about being here, we couldn't say that. But I think the whole issue of raising awareness about elder abuse and the importance of it, and the value of elders is something we're all missing. So we need to constantly promote elder abuse awareness and somehow make that a more important issue.

And then lastly, I would promote that we should mandate continued education for law enforcement and the district attorneys regarding this issue. We need to have continual workshops for all law officials, not just the sheriff's office, but all law enforcement within a jurisdiction to make sure they are aware of these issues and how to treat them.

I agree with the comments about making financial institutions mandated reporters. That's essential. And I also want to throw in something about the budget situation, and we need to do real math here. With seniors and the population of individuals 85 and older, they're the fastest growing population in the state. Flat funding doesn't get it done. If that population is growing the fastest and funding is flat, that means that population is the one that's being defunded the fastest. So I think that's a real challenge to look at. We need to look at dollars, dollars to number of people, not just dollars as in \$2 million sounds good to address the issue.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments. And that takes us to, Sir if I could ask you to just hang on, grab a seat right there in front if you could, so you're not hovering. And what I'm going to do is, I'm going to take Sydney Chapman, followed by David Bockman, and then I'm going to get to you Sir. If we could just get you to take a seat right there, that would be helpful. Sidney Chapman is no longer with us. Okay, but we have a very thoughtful comment on the back that has been written down, to be followed by David Bockman.

David Bockman:

Some comments regarding the comments made by Prescott Cole. Excuse me. I was unaware of these living trust seminars. I haven't gone to any of them, but it seems like there's very little regulation of this field and maybe there needs to be some. These people who run these seminars they're apparently unregulated according to the comments made by Mr. Cole. So I think you might look into that situation.

On the other hand, the people that are coming in here to get these living trusts, my mother died in a nursing home and she was a renter, didn't own an automobile. She started with \$30,000 and gradually it disappeared after staying a long time in the nursing home. She ended up dying there, actually dying in Dominican Hospital here. So she had Medi-Cal at the end of her life. So, she didn't have a home to give way to relatives. But some of these other people that do have these homes and have automobiles

and so on, and maybe have \$500,000. They seem to have a goal going into these living trusts, according to him of getting around the system so they can get on Medi-Cal. It reminded me of people who find ways of paying no income tax when they're making a million dollars a year or the Enrons.

And it seems like there's a little bit of dishonesty on both sides. And I think given the budget here in California, I don't think it's right for people to try to work the system so they can get on Medi-Cal more rapidly by putting their money off into some tax shelter. So I think there needs to be regulation of that sort of thing, also some regulation of these financial planners or estate planners, more so than there is now. More training perhaps, and I think that would help quite a bit. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. I apologize, I can't quite read the last name. Is it Mr. ...?

Bill Eke:

It's spelled E-K-E.

State Assemblyman Joe Simitian, Chair:

Eke. Bill Eke, please come to the microphone.

Bill Eke:

Let me cry on your shoulder, I'm glad I came today.

State Assemblyman Joe Simitian, Chair:

Thank you.

Bill Eke:

I've been broken hearted for two years. I took care of my mother for over 20 years after my dad died. She eventually wound up in a wheelchair, but her doctor demanded that she go into a nursing home. That was the worst thing that ever happened to her. But I decided, well if he's her doctor. So, I did put her in a nursing home. But, the charges were \$5,000 a month. I was down there every day to be of assistance to my mother. They were not doing their work. She wasn't even being fed. So when I'd go to the place where there might be some food served and take it to her room, which was always a mess, they were doing no work. It hurt me when I was down there.

State Assemblyman Joe Simitian, Chair:

Please if I could ask you to face this way and address your comments to the Committee and the camera, that would be helpful.

Bill Eke:

All right. Well, there are people here who know me and who might have even met my mother. But you know, I would try to be of assistance to her, during the middle of the day when people would come in for social activities and I would help out with those things. I was always getting compliments to help with any social activities. But like I was saying, they weren't even feeding her. And so if I went to get food to help feed her, or even clean her room, I was accused of stealing it for myself. That hurt. So I began to think, no I've just got to get her out of here.

So the administrators they weren't doing their work, and you know what they said to me? I'm not a young man anymore, they said, "What is a 70 year old man coming to visit his mother for?" You know what they did to me? They called the sheriff on me. That's terrible.

So the very day that I went there to get her out of there, I didn't want to go in because I was afraid I'd be arrested for trespassing. And as I stood there at the door, all of a sudden these emergency vehicles were showing up. I had no idea what that was all about, but finally the administrator, I guess had a change of heart and he said, "Come on in Bill." And, my mother was being picked up by those emergency vehicles. I got in the ambulance with her to go to Dominican where she died. And this was just a few days before Christmas of 2001.

But I don't understand. I mean if you're paying people \$5,000 a month, why, and I'd be down there and I could see they weren't doing their jobs. Her room would be a mess. They weren't feeding her. Excuse me for going on about this, but why aren't they doing the work that they're being paid for. I just don't understand it.

So, it was on a Sunday morning and I tried to be down there every day to make sure, because it wasn't far from where I lived, you know, the family home. And one Sunday morning I went down there to make sure she was all right, and her room was a mess. And she was crying tears, "Bill, get me out of here." But the workers didn't come to you know, help clean up her room or anything. All they did was come to kick me out. I don't understand, but it hurt.

State Assemblyman Joe Simitian, Chair:

Mr. Eke, I'm going to thank you for your testimony today. I appreciate you being with us.

Bill Eke:

Sorry.

State Assemblyman Joe Simitian, Chair:

That's all right. Thank you for your testimony, we'll follow up with you from my staff, Ms. Loquist. I'm going to let Mr. Laird get to his meeting. I want to thank him before he leaves both for his participation today, but also for his work on the Committee to date. And, we will continue to take testimony. I will stay here until the testimony is completed and we will share all the testimony with both Mr. Laird and other members of the Committee as well. So let me thank Mr. Laird; I understand you have to step away. I appreciate your accommodating the schedule of the Committee. And let me ask now that we hear from Robert Berryessa, to be following by Francie Newfield, to be followed by Beth McKinnon.

Robert Berryessa:

I want to thank you.

State Assemblyman Joe Simitian, Chair:

Thank you, Sir.

Robert Berryessa:

And I can appreciate what this man went through. I went through about eight different nursing homes, and I think those are the Dachaus of America – the concentration camps. The women who work there, the nurses, are just terrific, but too often the people who run it don't, you know, carry out what they're supposed to do. And these people are just neglected. And I know I went to ones here and other places, and I've seen the same thing. He's so right about that. When it comes to personal abuse, I've seen my mother who cried and said, "Why am I alone?" And I said, "Well because your son changed from Jesus Christ to Adolph Hitler, and has taken power over you." So I've seen abuse in different ways.

There's a strange kind of abuse that's happening with our group called the DeAnza Mobile Home Estates, since people found out about rent control. And I read something in your booklet here that really says a lot to me, and I didn't know that before. Financial abuse can be as complex as manipulating a victim into turning over property to an abuser. Because an elder victim's life savings can disappear and leaves them unable to provide for their needs and afraid of tomorrow.

And so I live in DeAnza Mobile Home Estates. In fact, it's the same place that Joe Fendrick's parents live in. And when I talked to his father, I never realized you're right, it is abuse. Because you have to be 55 and older in order to live there. Anyway, I've been there about 11-12 years now, and it was so great. Well in 1994, MHC, called the Manufactured Home Communities, that own 150 parks moved in from Chicago and took over the property in 1994. Now, we've had rent control since 1991. Rent control, that means you can't raise the rent any further than you're allowed to each year. Anyway, MHC fought the City of Santa Cruz, the Council, and us. They brought in their high priced lawyers and eventually we've had to buckle down, all of us, to sign 44 pages to say that we will go along with the rent control, but once we leave, the rent controls dies. That means we can't sell our property, can't give

it to our children or anything like that, it's lost equity. So I feel that's a strange kind of abuse, but it is an abuse of its own kind.

And I find, as I checked around, that a lot of mobile homes are becoming a thing of the past. Where do the elders go. They can't afford houses or condominiums or townhouses, so mobile homes are the one way to go. Los Gatos, now because I called up some lawyers there, said there's only two mobile homes left in Los Gatos. We are being removed by the big money people.

There must be something wrong with monopoly when a company called the MOB house in Chicago, ends up owning all this property and gets rid of us. Because I can see it right now, what's going to happen. Our place up there is going to be a concentration camp and a cemetery for the elderly. Little by little, they're going to remove us, because these 44 pages have things in there that any time you do something wrong, they'll be on your back. Paint this, paint that, get rid of the mold and there. Eventually, you'll just have exhausted your money and where do you go? A nursing home, and you can't even afford that.

So I didn't know if the Committee knew about this kind of abuse that's happening, besides personal abuse, the abuse this gentleman mentioned. There's also this kind of abuse too. I don't know if anybody's ever addressed it. I wish somebody would, and I thank you very much for the time you've given me.

State Assemblyman Joe Simitian, Chair:

Thank you for being here today, appreciate your participation. That brings us to Francie Newfield who will be followed by Beth McKinnen and then Linda Howe. Ms. Newfield welcome.

FN: Thank you. I'm Francie Newfield, I'm the Acting Division Director of the Adult and Long-Term Care Division for Santa Cruz County Resources Agency. In addition, I am currently the Chapter President of the local Alzheimer's Association, and a family member with a person with dementia.

I wish to support the comments made by the panelists regarding the importance of training awareness of financial exploitation and the importance of reporting suspected elder abuse and dependent abuse to Adult Protective Services and law enforcement. I also strongly support the need to address sentencing orders preventing contact with the vulnerable population for the duration of probation and for those convicted of such offenses.

You're now doubt aware of the demographic projections regarding victims of Alzheimer's disease. At age 65 there's a 1 in 10 chance of having Alzheimer's disease. That prevalence doubles every five years, so by the time when we're 85 there's a 50% chance of having Alzheimer's disease or related dementia. This translates into a substantial population with elders and huge public policy impact. From the time that symptoms first appear, persons with Alzheimer's disease live an average of 8 years, and possibly as many as 20, with the disease. The cost of care for a person with dementia, whether the care is provided in home, in an assisted living center, or a nursing facility, is substantial. On the Central

Coast, cost of care may easily exceed \$4,000 a month. At least half of all nursing home residents have Alzheimer's disease or related dementia and the average annual cost of nursing home care ranges from \$40,000 to \$70,000. Medi-Cal pays nearly half of the total nursing home bill for two-thirds of nursing home residents.

Any means that can help an individual protect their assets for their own care is important public policy. When a person with dementia at any stage is financially exploited by an unscrupulous individual, they are robbed of their ability to receive the type of care they deserve. They lose their ability to choose the care setting and become dependent on public funds, most likely Medi-Cal to pay for all care and supervision. When a person with dementia is exploited into signing away financial assets for one's home, which in this area as several people have mentioned is likely to be worth at least \$500,000, they've been cheated out of more than just money. They surrender the quality of life they've earned and the ability to maintain comfort in a familiar environment. The State of California can protect the quality of life as well as public funds by taking actions that encourage early intervention and provide strong incentives to end financial exploitation of vulnerable seniors.

I applaud your interest in the matter of elder abuse and want you to be successful in furthering public policy to protect those who can no longer protect themselves. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you. Before we get to our next speaker, let me make one comment because we are running out of time for our viewers who are watching live. We will, however, continue the hearing and tape the hearing as well for subsequent broadcast in its entirety. The first comment I wanted to make is that it is the expectation that this effort produces specific legislative proposals. So while I highlighted that just in passing earlier in the hearing, the hope and expectation is that we will take the comments that we received both from our panel of experts, as well as members of the public, many of whom are expert in one way or the other in their own right, and that those comments will then be considered by members of the Committee, myself included, as well as Mr. Laird obviously.

And that will then produce a body of legislative proposals, which in the coming year or years will be introduced. That is typically the approach that is taken in the select committee process. The goal is to raise the issues, identify some specific solutions that might be possible and then move them through the legislative process.

So for those of you who are here today, as well as those who are watching, I want to assure you this is more than a conversational exercise. It will, in fact, result in legislative proposals to one degree or another. Some of those may be things that are relatively easily to move through the system in the course of a year. I'm sure almost all of you know it sometimes takes a good deal longer and is more difficult. It may take a course of years, but we will be taking those steps after today's hearing and after subsequent hearings as well.

For those of you who are watching today in Santa Cruz, live today on Wednesday, December 10th, we are going to be out of time at 4:00. And we thank the members of the public who have been attentive. We will, however, now continue with the hearing, and ultimately the tape will be edited and formatted to allow rebroadcast locally and on the California Channel around the State.

Let me go ahead now and return to, I believe it was Beth McKinnon who will be next, to be followed by Linda Howe. Beth McKinnon. We have a comment on the back, all right. Linda Howe. Ms. Howe, welcome and thank you for being with us.

LH: Thank you. My name is Linda Howe. I'm an Adult Protective Service Social Worker. I've been with the County of Santa Cruz for 29 years. I'd like to speak just very briefly about the subject of physical abuse of elders and dependent adults.

Most physical abuse is perpetrated by caregivers, very frequently family members. Caregiving is extremely hard work and very stressful. Add alcohol or substance abuse to the equation, and you're going to have abuse. The loss of a caregiver for any reason, whether you send them to jail or they burn out or get sick, equals nursing home placement for a senior or dependent adult. That's not an idle threat. That's not an idle fear of the elderly. They're going to going to a nursing home if they lose their caregiver.

Seniors and dependent adults need support services to 1) delay the need for round the clock care, and 2) to support the caregiver when care is required. Things like respite care, meals on wheels, adult day healthcare and in home support services that are already in place but frequently underfunded and under the budget cutting ax, are things that prevent elder abuse, dependent adult abuse, and keep people out of nursing homes. And anything you can do to support these programs and programs like them will help.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments. Point well made. Lisa Pearson to be followed by Carol Childers to be followed by Cheryl Keay. And I apologize if I'm mispronouncing the names as we go. Ms. Pearson, thank you for your patience.

Lisa Pearson:

Thank you. I am a licensed nurse. I started my career as a CNA. I am currently a nursing home administrator. I have been a nursing home administrator for more than 10 years. I am proud of what I do. I am very, very saddened by this gentleman's story. It breaks my heart. I am sorry. Fortunately, I have hundreds of stories that are better than that and are good stories. And there is a good side.

I support everyone's feelings about individuals not needing to be in a nursing home. I absolutely believe in that. I have always been very successful in running nursing homes with that philosophy. Meaning that lower levels of care, back to home rehabilitation, all those sorts of things. But unfortunately there is a

section of our population that requires our service. And we're there. We're there because we want to be and the majority of us love what we do. Every day is exciting and new.

I think the communities need to be more involved in nursing homes. There's a big volunteer program in all the hospitals. The pink ladies, you know, are just all over the hospitals doing nice and great things. And it is so hard to get that level of involvement in nursing homes. If we could have that, we too would benefit from those things.

In regards to the 3.2, I was speaking to Cheryl about that. Being a nurse and knowing about acuity, sometimes 3.2 isn't the answer. It depends on the level of care. It's not always so black and white. I would also like to say that in my experience, certainly in my personal experience, I never don't reach the 3.2 because I'm trying to save money. Or somehow that's an easier way. Frankly, it's easier to run an institution with lots of staff. It's more economical to have 3.2 and higher. There's no overtime. It's all wonderful, I just don't think, it's just not that simple.

There's not those bodies out there to be had. Whether it's the nursing schools or nursing in general. Perhaps it's the pay and the burn-out in nursing. You heard me say I'm a nurse. I'm not currently a practicing nurse.

And I'd like to speak to the feeder assistants program. It's a federal program that California had opted to get out of. And put a bunch of stops on and perhaps rethink that. I think we should look at other levels of staffing and nursing assistants and feeder assistants, those sorts of things.

I think we need to think outside the box. I would like to support Brian and the other gentleman who said about bringing nurses and administrators to hearings like this so you can hear the other side of it. Again, I'm sorry that gentleman had a sad story. And I know nobody wants to be in a nursing home, but we have to face the fact that they're there and let's find out how we can all make them better places.

State Assemblyman Joe Simitian, Chair:

Thanks you very much for your comments and your participation today. Carol Childers to be followed by Cheryl Keay to be followed by Linda Robinson. Is Ms. Childers still here? Welcome. Thank you for being with us today.

Carol Childers:

Hi, thank you. My name is Carol Childers and I'm the Meals-on-Wheels Mealsite Manager, so I see a lot of elderly people every day and I really feel that what we need to be doing is educating our elder themselves about elder abuse.

I really feel that people talk amongst themselves at our lunch and dinner programs. You see people forming friendships; they share their common problems, their issues. And I really think if we were to

educate folks about what financial elder abuse is – the different levels and types of abuse, and also demystify what adult protect services is and what's available.

Educating the elderly to this problem will help nip things in the bud. I think a lot of times people start hearing, there was talk about those long-term care things. You know, we see them advertised in the paper all the time. That's the kind of thing where I think if we educate our folks as to what that is, people will stop attending those things. And by not attending that type of thing, maybe we can put an end to it.

The other thing I would really like to encourage is, and I think it was spoken to by Mr. Frankel, is a registry for people who have been convicted of any crime, whether it's a misdemeanor or a felony against an elder person. And I say that because I know specifically in Santa Cruz County I had a former neighbor who recently confessed to stealing \$5000 from an elderly person's credit card. My big fear is she was employed through an agency. My big fear is this woman will get a slap on the wrist and will then go out in the public and start offering her services and will be under the radar. I really feel we need to have a strong registry like we have for sexual predators to prevent abuse of our elderly.

Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments and thank you for being here. Cheryl Keay to be followed by Linda Robinson, to be followed by Lydia Blanchard. And I apologize if I missed on the pronunciation.

Cheryl Keay:

Nobody gets it right. It's "Kay", but thank you very much.

State Assemblyman Joe Simitian, Chair:

With a name like Simitian I try, so thank you Ms. Keay for being here.

Cheryl Keay:

Thank you very much. My name is Cheryl Keay and I have worked for the Department of Health Services and Social Services as an evaluator and as an administrator at an RCFE. Two years ago I had the unfortunate lot to be in an acute hospital and I was physically abused when I was in ICU. I think I kind of cover every area.

Everybody seemed to have their own agenda, but what I think needs to be done at the state level. And I do need to back up to say the Department of Social Services does have to have FBI checking before we can hire any staff. They need to have the Attorney General, DOJ, and the FBI fingerprint checking. Unfortunately, if someone is working for the Department of Social Services in an elderly facility and they

go to Department of Health Services and work in a skilled facility or go to Home Health Services and work in a home, none of these registries communicate. Everything is separate in each separate department. I know that I have had the fingerprint portion of Social Services call me to have me remove a staff person from my facility for something that had come up after he had cleared fingerprint. Yet he is still working in a skilled nursing facility. So until the state thinks about it and gets these agencies to communicate and I would suggest it also might help with the budget problem. Must be spending a lot more money for multiple agencies to be sending fingerprints through the different agencies than to just have one area that all fingerprints will be cleared.

State Assemblyman Joe Simitian, Chair:

Is it your understanding that not only do we have multiple agencies involved, but that we require people to absorb the cost?

Cheryl Keay:

Yes, we absorb the cost. For us it's \$82. That includes the DOJ, AG, and FBI, as a provider.

State Assemblyman Joe Simitian, Chair:

Thank you. Thank you for your comments. Thank you for being with us today Ms. Keay. Linda Robinson, to be followed by Lydia Blanchard. And I believe that Ms. Blanchard is our last card unless I'm missing a card. If I am, raise your hand and our staff person will come to you. Ms. Robinson, welcome.

Linda Robinson:

I'm Linda Robinson. I'm the Coordinator for the Local Long Term Care Ombudsman Program. And I just wanted to comment on something that someone brought up during financial abuse. Ellen Pirie talked about notaries. You know, witnessing power of attorney documents and the potential there for an abuse situation. I wanted to let you know about the kind of things that have come across the Ombudsman's Office.

Situations where residents in nursing facilities are at risk because a family member or a friend who is really just trying to exploit them, but they have to get that power of attorney document signed over will bring in a notary to do that witnessing. The notary, I don't know if this was explained earlier, is only there to witness the signature and not to determine capacity and willingness of this resident signing over power of attorney. So I really support looking at making changes at least at nursing facilities.

Right now the law requires the Ombudsman to witness durable power of attorney for healthcare documents. And our role is to go in and we have to interview the resident in private, determine if they understand what they're witnessing and whether or not they're being coerced into witnessing it. About 50% of the time we're not able to witness a power of attorney for healthcare document. I would like to

see that extended to include power of attorney for finance documents because these residents are really at risk.

Although there are many nursing home administrators and social workers who will notify us to give us a heads-up, we can't really stop it from happening. We can certainly go in and interview the resident and do our best. So if that could just be extended to cover power of attorney for financial documents, that would be good. It would be a good start.

State Assemblyman Joe Simitian, Chair:

And I believe now it's time to hear from Lydia Blanchard.

Lydia Blanchard:

Hello. It's been very interesting for me to edge my way into seniorness. In 1964 I worked as a public welfare social worker for the old Medical Aid to the Aged which preceded Medi-Care. There were interesting changes at that point. So this issue has been in my life in many ways including long term work at a psychiatric hospital that included elders in Walnut Creek.

I'm a licensed marriage and family therapist. At every point in my training and my experience issues of abuse including elder abuse came up. Very often in unfortunate circumstances where supervisors, often supervisors hired from out of state said, "Oh no, we don't do anything about that." We was Texas or we was some other setting. So training is extremely important, particularly for timid interns who might start believing they didn't need to report the abuse they were being trained to report.

The booklets and the other things that your agencies are doing are extremely important. I would like to suggest required CEUs, continuing education units, for licensed psychotherapists of all levels, and perhaps clinical psychologists and licensed clinical social workers. I know that is anathema to those professional associations who want things clean and minimal. I appreciate their reasons, but I do think this is an area that is extremely important and is being neglected.

With regard to reaching out to the public for this event, I wanted to suggest and I am aware from speaking to your staff that many of the mailings went at your expense to people. This happened to go to my husband who is neither a psychotherapist nor particularly active politically in the community as his wife is, so I would like to suggest that these things also go to marriage and family therapists if at all possible, clinical social workers, and so forth. And also to entities like the Santa Cruz Action Network. Those who are committed to the bettering of the community.

And just a minor thing, I didn't understand how to submit questions and had to go ask, so I would encourage your staff to milk the aisles and say, "OK, who else?"

State Assemblyman Joe Simitian, Chair:

I think the responsibility for that rests with me. I mentioned it a bit late in the program. I do apologize. Thank you for your comments. Are there any others, apropos of that comment, are there any others who would like to speak?

If not, then I will thank you all once again. Thank you to the panelists who really did, I think, an outstanding job. Thank you to those of you who came today to speak. Your comments were very helpful and informative. Thank you to those of you came just to be better informed yourself or to lend moral support. And thank you finally to the City of Santa Cruz for hosting us here today. Without objection, this December 10th meeting of the Select Committee on Elder Abuse is adjourned.

END OF HEARING